

The Trade, Investment and Labour Mobility Agreement (TILMA):  
An Analysis of Politics, Processes and Provisions

Thesis submitted in Partial Fulfilment of the Requirements for  
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University of Saskatchewan

Saskatoon

By

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## **Abstract**

This thesis examines the comprehensive Trade, Investment and Labour Mobility Agreement (TILMA) that was signed in 2006 by the governments of Alberta and British Columbia. The central objective is to examine why two successive Saskatchewan governments chose not to sign the TILMA. This thesis also examines the TILMA's influence on subsequent developments in internal trade policy reform in Canada. The three central research questions are:

- What is the TILMA, and how does it fit within the existing internal trade regulatory regime established under the Agreement on Internal Trade (AIT)?
- Why did Saskatchewan not sign the TILMA?
- What effect, if any, has the TILMA had on establishing a new model or paradigm for internal trade policy in Canada?

The key findings are that Saskatchewan did not sign the TILMA because Alberta and British Columbia would not accede to its demands to make exemptions for the procurement practices of municipalities and the subsidiaries of crown corporations. Another factor was the decision by the Saskatchewan government to launch a public consultation process before ratifying the agreement. The public consultation process provided the opponents of the agreement (i.e., municipal government, labour and non-governmental organizations) with an opportunity to organize and express their opposition to the agreement. Their strong opposition to the agreement during those consultations led both the NDP Government and subsequently a cautious Saskatchewan Party Government, which only had a slim majority in the legislature to walk away from what was being portrayed in the media as a very contentious policy decision. Their choice stands in contrast to that of the Liberal and Conservative Governments of British

Columbia and Alberta respectively, that chose to sign the TILMA prior to undertaking consultations with the public and community stakeholders. In 2010 the Saskatchewan Party government would sign the New West Partnership Trade Agreement that included almost all of the provisions of the TILMA without public or stakeholder consultation.

This thesis reveals that the TILMA has had modest but important effects on establishing a new model or paradigm for internal trade policy in Canada by enhancing the utility and scope of binding enforcement mechanisms and comprehensive interprovincial agreements. It was more comprehensive in scope than interprovincial agreements that had been signed previously to supplement the AIT. Contrary to what some had envisioned or proclaimed, the TILMA did not have substantial transformative effects either in addressing internal trade barriers in Canada or in supplanting the existing framework of internal trade policy established under the AIT.

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## Chapter 1: Introduction

### **1.1 Federalism and Internal Free Trade in Canada**

On the surface, it seems that federalism and economic integration with complete or extensive levels of free trade among member units are inextricably related and generally mutually reinforcing. Upon further scrutiny, however, a tension tends to be revealed between the political dynamics of federalism and a high degree of economic integration and free trade among member units (MacDonald, 2002: 139). The major reason for this is that the existence of sub-units within the federal system not only creates a series of political units, but it also creates a series of economic markets in competition with each other. As Doern and MacDonald note in their book *Free-Trade Federalism*, federalism is not prescriptive of the type of powers and the amount of influence that various governments exercise over trade and the economy. This is something that is negotiated over time. In the Canadian context federalism has created political and economic sub-units, perhaps at the expense of full and complete political and economic union.

The concept of economic union was defined by the federal government in a discussion paper entitled “Securing the Canadian Economic Union in The Constitution” presented to the Continuing Committee of Ministers on the Constitution in July 1980. In that they stated:

*An economic union is an entity within which goods, services, labour, capital and enterprise can move freely, that is, without being subject to fiscal and other institutional barriers, and which is endowed with institutions capable of harmonizing the broad internal policies which affect economic development and of implementing common policies with regard to the entity's external relations.*  
(Dalfin and Dunbar, 1986: 164)

This concept of economic union has two important elements: one is the existence of a single, free market across which goods and services can cross free of barriers; the other is the coordination and harmonization of policies within the polity in order to create a united, single national



regulatory regime by which the federal government regulates international trade. The concepts of barrier-free trade and policy harmonization embody the two main principles of internal and international free trade. At their most basic, Canada's internal and international trade policies seek to fulfill these two broad goals as part of the effort of establishing and sustaining a true Canadian economic union.

The absence of tariffs was particularly significant in the early post-Confederation period because at that time the tariff was the main source of revenue for the state (Doern and MacDonald, 1999: 3). Section 121 of the *British North America Act 1867* explicitly addresses inter-provincial tariff barriers. It states, "All articles of the growth, produce, or manufacture of any one of the provinces shall, from and after the union, be admitted free into each of the other provinces." (Government of the United Kingdom, February 21, 2008). As clear as this statement is, in time this section proved to be insufficient as it only governed explicit tariff barriers. Modern internal trade disputes have been over non-tariff barriers such as unfair practices of procurement, exclusionary legislation and regulatory differences.

Non-tariff barriers to trade can take two forms: these are direct barriers and indirect barriers. Direct barriers are the most visible, measurable and easily combated of non-tariff barriers. Direct barriers include direct investment incentives, residency requirements that restrict labour mobility, or the use of income and price stabilization policies in agricultural trade. Indirect barriers are the result of more subtle and, by definition indirect, barriers to trade that are caused by the inequitable application of administration procedures and unharmonized regulations. These include environmental protection policies that exist in some provinces and not others and unharmonized consumer protection standards. These barriers are difficult to measure accurately due to their subtle and indirect nature, nevertheless their impact is enough to

warrant significant time committed by all levels of government to back up their oft stated goal that is to reduce all forms of non-tariff barriers by any reasonable means necessary (MacDonald, 2002:140).

These non-tariff barriers have been addressed in many ways since Confederation. They have been the subject of court rulings, intergovernmental meetings, trade agreements, royal commissions and inter-provincial summits. Despite this significant and sustained attention, the actual impact and financial cost of interprovincial trade barriers is still contested. Most analysis today estimates that interprovincial trade barriers cost the Canadian economy approximately 0.5 – 0.25 percent of Gross Domestic Product (GDP) (Campbell, 2007 and Rennie, 2007). Given what seems to be a relatively small proportion of the GDP, why are Canadian provinces preoccupied with interprovincial trade barriers? The answer is that despite the fact that they only account for a very small proportion of GDP, the costs are still in the billions of dollars, and are a historic and persistent frustration for businesspersons. These barriers have also been the subject of international criticism by both the International Monetary Fund and the Organization of Economic Co-operation and Development who have cited these internal barriers as part of the reason for Canada's relative poor productivity as compared to other OECD nations (Macmillan and Grady, 2007: 2). There are some often-cited instances of trade across inter-provincial borders in Canada being more restrictive than across international borders. Notable examples of this include some trade among countries of the European Union and even some trade from Canada to the United States. This adds to the critiques of internal trade barriers in Canada provided by business persons, think tanks, economists and politicians that have persisted for over a century.

The following chapter of this thesis will reveal that eliminating internal trade barriers in Canada has been a major preoccupation of, and subject of extensive and intense negotiations between, the national and provincial governments. The major product of such negotiations was the 1995 Agreement on Internal Trade (AIT), a multilateral agreement signed by the federal, provincial and territorial governments.

The subsequent chapters will examine the bilateral Trade, Investment and Labour Mobility Agreement (TILMA) signed between the provincial governments of Alberta and British Columbia in 2006, which was one of the most significant recent efforts to reduce trade barriers within Canada. Those two provincial governments invited their counterparts in Saskatchewan to sign the agreement, but the latter decided not to do so. This included both the NDP government led by Premier Lorne Calvert and the Saskatchewan Party government led by Premier Brad Wall. Eventually the Wall government would collaborate with the Alberta and British Columbia governments to negotiate, sign and implement a new agreement known as the New West Partnership Trade Agreement (NWPTA), which was signed in 2010 and is to be fully implemented by 2013. The NWPTA includes and expands the substantive and geographic scope of the TILMA. It consists of four agreements—an innovation agreement, an international cooperation agreement and a procurement agreement. As well, it expands the geographic scope of the agreement to include the province of Saskatchewan. This thesis examines the TILMA from its original signing to its integration into the NWPTA. At the time of writing, the TILMA is still in force between Alberta and British Columbia. It is unclear whether it will remain in force only until the NWPTA is fully implemented in 2013, or beyond that period.

## **1.2 Research Objectives and Questions**

The central objective of this thesis is to explain why two successive Saskatchewan governments chose not to sign the TILMA. At the same time, the thesis examines TILMA's influence on subsequent developments in internal trade policy reform in western and central Canada. Finally, the thesis examines current trade agreements and reform initiatives, such as the NWTPA, to ascertain the extent of the TILMA's influence upon internal trade policy in Canada.

The three central research questions are:

- First, what is the TILMA and how does it fit within the existing internal trade regulatory regime established under the AIT?
- Second, why did Saskatchewan not sign the TILMA?
- Third, what effect has the TILMA had on establishing a new model or paradigm for internal trade policy in Canada?

## **1.3 Organization of Thesis**

The thesis is divided into four major chapters bookended by the introductory and concluding chapters. Chapter two provides an overview of the purpose, process of creation and politics and future prospects of AIT. More specifically, it provides the historical context for the current regulatory regime in Canada as it existed before the TILMA. Chapter three provides an analysis of the TILMA with a special focus on the process of implementation and consultation and the provisions of the actual agreement. Chapter four continues the examination of TILMA, but does so from the Saskatchewan perspective. This chapter will attempt to determine why the TILMA was not signed in Saskatchewan by focusing on the public discourse articulated in public governmental documents and in the media. Chapter five examines other internal trade agreements since the signing of the TILMA and explores the effect that the TILMA had on those

agreements, and especially on the NWTPA. Chapter six provides a summary and analysis of the findings.

#### **1.4 Methodology**

The information for this thesis is derived from two major sources, primary sources and secondary sources. Primary sources include official documents of governmental and non-governmental agencies related to the various internal trade policies and agreements since Confederation including the policies being examined. These documents provide an examination of the agreements as they are, and as they were presented by various governments in official communications and publications. Secondary sources include scholarly journal articles and books produced by academics as well as reports produced by various think tanks. Newspaper articles will provide a major insight into the public discourse surrounding each case study and the manner in which the TILMA was communicated to the public through articles and editorials. Interviews will not be used because part of the objective of this thesis is to tell the story on the basis of the public documentation rather than the explanations provided by key stakeholders after the policy development exercise is completed.

## *Chapter 2: Internal Trade and the AIT*

### **2.1 Introduction**

The ambiguity of the Constitution has historically left little structure to govern the dynamics of internal trade developments and federal / provincial relations in general. One particular area of contention has been the division of powers related to internal trade, trade agreements, and economy. The result has been a contentious dynamic of dependence, conflict and co-existence that has marked a tumultuous history of intergovernmental relations within Canada.

A major shift in Canadian trade policy began with the sweeping election win of the Progressive Conservatives in 1984. At that time, Prime Minister Mulroney promised to restore cooperative federalism within Canada. In an address on August 6, 1984 he made the following promise:

*To end parallel or incompatible planning once and for all between the two orders of government, we will set up a federal-provincial advisory and coordinating body which will operate at the highest level, namely with 11 leaders themselves working together in an appropriate institutional framework advising as to the options envisaged and the directions to take. (Simeon and Robinson, 1990: 302)*

This time was marked by a general desire for an end to asymmetrical federalism and for a cooperative, pan-Canadian federalism to be re-established, especially following the constitutional process and Quebec's growing desire for autonomy.

By the early 1990s, there was an emerging consensus that there was a need to deal more effectively with ongoing trade and labour negotiations among the federal and provincial governments within the context of executive federalism. Despite this apparent need, federal and provincial governments have historically been averse to creating a 'third' level of bureaucracy in federal-provincial relations to administer and consolidate such policies (Simeon, 2006:139).

They therefore chose to create a permanent secretariat to engage and coordinate the various departments of all federal, provincial and territorial governments involved in internal trade, but this secretariat would have to remain subordinate to governments involved. In 1994 that concept was operationalized with the signing of the AIT.

## **2.2 The Purpose of the AIT**

In July of 1995 the Agreement on Internal Trade came into effect and sought to formalize the process of inter-provincial trade by liberalizing and harmonizing trade regulations as well as providing a venue for bringing all governments together to form a pan-Canadian mechanism for decision making, negotiation and dispute resolution with a permanent secretariat.

The AIT brought together ministers and officials from several branches of government, including industrial-regional policy, trade policy and federal / provincial relations. For decades these respective ministers would negotiate internal trade policies on an ad-hoc basis usually focusing on single issues and rarely reaching a consensus. There was a clear need to inject transparency and formalize inter-provincial relationships in the shadow of constitutional debates and other high profile exercises that put executive federalism into the spotlight for all Canadians and put provinces against each other and the federal government. For these reasons and more to be discussed, the Agreement on Internal Trade (AIT) was perhaps the most significant development in internal-trade and labour policies to date and it marked a clear rejection of the ad-hoc and incremental policy changes of the past.

The agreement was significant for many reasons, but foremost among them was that it created a permanent institutionalized body responsible for addressing internal trade barriers. The AIT was created not only to address a single issue, as was often done at ministerial meetings in the past, but addressed eleven major policy areas and sought to ensure that new barriers would

not be created in the future. Furthermore, it provided a mechanism for resolving trade and labour mobility issues between provincial, territorial and federal counterparts (Internal Trade Secretariat, 2008).

### **2.3 Process of Creating the AIT**

Negotiations regarding the creation of the Agreement on Internal Trade began in March of 1993. The objective was clear from the beginning that the provinces would address many major aspects of inter-provincial trade barriers at once, with one proviso; there would be no limitations to legislative power on any government. As a result of this comprehensive approach, negotiations took place similar to that of an international agreement, where provinces were treated with a great deal of independence, such as that of an independent nation in an international trade agreement. Independence and an agreement focused on broad areas of concern were equally important to the participants therefore it made consensus and enforcement nearly impossible, and for this reason, the commitment to freer trade was made only in principle (E. W. Clendenning and R. J. Clendenning, 1997: 37).

Proceeding into the negotiations of the AIT there were two distinct, but not necessarily opposing views on what the goal was. The federal government considered the negotiations in terms of a natural extension of the free-trade agenda of the 1986 – 1993 period. Some provinces, including Alberta and Manitoba shared this view (Doern and MacDonald: 7). Whereas provinces such as British Columbia and Saskatchewan saw the AIT negotiations as not only a part of a trade agenda, but as a part of a broader need to strengthen governance and federalism in the country (Ibid.). Whatever the motivations, there was a general realization that the AIT was a significant change in the way provinces and the federal government conducted future negotiations with each other. It was a step in both state building and province building through



the manner in which it made trade and economic growth a priority. It also fostered openness and equality among provinces in the federation in a time of extreme asymmetrical federalism and contentious provincial / federal relations surrounding the 1995 referendum in Quebec and the rising political dominance of the Quebec sovereigntist movement.

National unity was also a tangible, if not dominant, motivator for the federal and provincial governments. This desire for a renewal of national unity came from the recent failures of the Meech Lake and Charlottetown constitutional reforms. A Quebec election was looming in the fall of 1994, and Canada needed a 'win'. Further to this, specific provisions of the AIT were endorsed as a means to strengthen the Canadian identity. For example, free internal trade was endorsed by the federal government, in part due to hopes that by allowing individuals to live, work, and invest anywhere in the country, this in some way would foster a greater sense of interconnectedness and Canadian unity at the individual level (Ibid.). Whether the AIT agreement played a significant role in fighting separatism or fostering federalism is difficult to measure, but the AIT continues to play a prominent role in federal / provincial internal trade negotiations and internal trade remains a high priority for all provinces and the federal government.

## **2.4 Provisions of the AIT**

The literature suggests that the AIT was remarkable for the institutional, consensus driven approach and the permanent mechanisms it created. However, the literature produced since its inception also indicates that there has been a failure to live up to the principles of this agreement and that the lack of an effective enforcement mechanism in the agreement has undermined its legitimacy and effectiveness. The AIT today stands at an important historical point, where perceived weaknesses threaten its relevance. A decision must be made as to whether

reform can come through the mechanisms of the AIT itself, or whether a separate agreement such as the TILMA that Alberta and British Columbia signed on April 2006 is the answer. In order to understand the consequences or benefits of these options, one must understand the AIT agreement in more detail.

The AIT consisted of the original agreement, which entered into force July 1, 1995, as well as ten subsequent protocols of amendment that supplement the agreement. Article 100 states the objective of the agreement as follows:

*It is the objective of the Parties to reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services and investments within Canada and to establish an open, efficient and stable domestic market. All Parties recognize and agree that enhancing trade and mobility within Canada would contribute to the attainment of this goal. (Internal Trade Secretariat, 2008a).*

By far the most comprehensive internal-trade agreement at the time, the AIT was based upon six broad guiding principles to tackle existing trade barriers and ensure that new barriers to trade were not created in the future. Further to these six principles, there were eleven areas or economic sectors that were identified and to which the agreement applied. It is noteworthy that the specifics of the eleventh sector, energy remain a work in progress to date (Internal Trade Secretariat, 2008a).

The AIT was built upon six guiding principles, that state:

- Parties to the AIT agreed to six general rules, established to prevent governments from establishing new trade barriers and to reduce existing barriers:*
- i. **Non-discrimination:** *Establishing equal treatment for all Canadian persons, goods, services and investments.*
  - ii. **Right of Entry and Exit:** *Prohibiting measures that restrict the movement of persons, goods, services or investments across provincial or territorial boundaries.*
  - iii. **No Obstacle:** *Ensuring provincial/territorial government policies and practices do not create obstacles to trade.*
  - iv. **Legitimate Objectives:** *Ensuring provincial/territorial non-trade objectives which may cause some deviation from the above guidelines have a minimal adverse impact on inter-provincial trade.*
  - v. **Reconciliation:** *Providing the basis for eliminating trade barriers caused by differences in standards and regulations across Canada.*

- vi. **Transparency:** Ensuring information is accessible to interested businesses, individuals and governments (Ibid.).

Economic Sectors:

The AIT focuses on reducing trade barriers within eleven specific sectors:

- i. **Procurement:** Eliminating local price preferences, biased technical specifications, unfair registration requirements and other discriminatory practices for non-resident suppliers in order to ensure equal access to procurement for all interested Canadian suppliers.
- ii. **Investment:** Ensuring Canadian businesses can make investment decisions based on market conditions by eliminating barriers to investment based on head-office location, prohibiting local content and purchasing conditions, reducing local residency requirements and standardizing corporate registration requirements.
- iii. **Labour Mobility:** Enabling qualified workers to practice their occupation anywhere in Canada by eliminating residency requirements, requiring licensing, certification and registration of workers to be based primarily on competence, committing to recognizing a worker's occupational qualifications and reconciling differences in occupational standards.
- iv. **Consumer-Related Measures and Standards:** Reconciling the consumer protection requirements of different provinces and territories which act as non-tariff barriers in order to allow Canadian firms to capitalize on economies of scale by servicing larger markets with the same products.
- v. **Agricultural and Food Products:** Examining supply management systems for dairy, poultry and eggs; removing technical barriers between provinces, such as differing product and grade standards, and plant and animal health regulations.
- vi. **Alcoholic Beverages:** Prohibiting discriminatory practices in areas such as product listing, pricing, distribution and merchandising between the liquor control boards and retail outlets of the provinces and territories.
- vii. **Natural Resources Processing:** Prohibiting the introduction of new barriers to the processing of forestry, fisheries and mineral resource products.
- viii. **Energy:** Harmonizing the treatment of energy goods and energy services. Negotiations are still underway on this chapter.
- ix. **Communications:** Ensuring equal access to public telecommunications networks and the use of public telecommunications services.
- x. **Transportation:** Harmonizing the regulations applicable to commercial vehicles such as safety standards and weights and dimension rules.
- xi. **Environmental Protection:** Ensuring that federal, provincial or territorial environmental protection measures do not become a non-tariff trade barrier.
- i. **Dispute Resolution Procedures:** The AIT features a formal dispute settlement mechanism to deal with complaints. It is accessible to governments, individuals and the private sector (Ibid.).

The AIT represented a new type of agreement, but indeed had to compromise a great deal in order to come to fruition at all. It was much broader than any previous modern internal trade agreement; however, the AIT agreement was still specific to the sectors it affected. The agreement was also ambiguous on its goals and how it may reach them. Furthermore, the twelve areas specified impact provinces unequally, and the agreement requires consensus for enactment. Progress has been slow to date.

## **2.5 Politics of the AIT**

During a review and discussion of the AIT done by the Certified General Accountants Association in 2004, one unnamed participant stated the following which is important for understanding significance of the AIT as both a policy and a process:

*... the AIT did not appear out of thin air. It was imposed on a heterogeneous mix of economic sectors, each with its own set of stakeholders and issues and its own decision-making arrangements. Often they have evolved over generations and, as a result, reflect the unique history of the sector. By contrast, the AIT commits these sectors to respect common principles, rules and standards aimed at establishing a level playing field. In effect, the AIT embodies a new vision of the Canadian economic union. (Lenihan and Hume, 2004:3)*

This ‘new vision’ was imposed with a new institutional mechanism, included many departments and levels of government, and offered a further challenge of seeking to accomplish in years what had been a work in progress for decades before. This ambitious project has many critics who question whether the vision has, or ever will truly be realized. While some criticize it, there are many who see it as an innovative and important milestone in Canadian internal trade policy.

### **2.5.1 Proponents of the AIT**

One of the most influential champions of the AIT was Robert Knox, the federal government official responsible for internal trade policy between 1986 and 1995. In a 2007 article in *Canadian Business* he offered the following successes attributable to the AIT:

*Thanks to AIT and the pro-trade era it helped usher in, Ontarians can now drink beer made in Alberta and vice versa, for example. It has also helped create a Canada-wide market for government procurement--an improvement from the balkanized system that existed in years past. And finally, it has discouraged provincial governments from introducing new protectionist measures... (McClearn, 2003: 31-37).*

On June 16 of 1988, the Federal – Provincial – Territorial Ministers on Barriers to Internal Trade set as their main goal the adoption of “100 percent open tendering on goods procurement over \$25 000 by April 1<sup>st</sup> 1992” (Government of Canada, 1988). Significant progress towards this goal was never achieved until 1995, when the AIT agreement came into force. The AIT has achieved this and other significant goals in inter-provincial relations, which were not achieved by ministerial meetings and the ad-hoc nature of relations previous to its creation.

### **2.5.2 Critics of the AIT**

The AIT is undermined by many criticisms usually centering upon its ineffective dispute resolution mechanism; however, these criticisms are symptoms of a larger problem. The greatest problem of the AIT is that it is not accessible to and reflective of all sectors of the economy, or even all that are listed in the eleven categories covered by the agreement. The agreement exists in the realm of governments, rather than the businesses that it is meant to help. The AIT secretariat represents the needs of the ministers involved and the ministers involved represent their constituents, but no direct link exists for businesses to effectively address concerns through the AIT, and there is a lack of communication between governments and community stakeholders.

There is also great misconception that all businesses are in favour of the AIT. It is true that many business organizations such as the Canadian Chamber of Commerce, and think-tanks such as the Conference Board of Canada, the Frasier Institute and the C.D. Howe Institute all favour liberalized trade; however, it is often business interests, not governments that are undermining the effectiveness of the AIT. Governments may be the ones dragging their feet on implementation of pan-Canadian standards, but it is often a response to intense domestic pressures.

Strong interest groups, such as the dairy industry in Ontario and Quebec, and labour unions, do not support many aspects of the AIT agreement. Protectionism and regulation is good for some industries. For example, impediments to soy imports in Ontario and yellow margarine in Quebec have been the subject of court challenges and inter-provincial disagreements for decades but have not been resolved (McClearn, 31-37). These interest groups weaken government resolve to pursue trade liberalization. After all government representatives may be committed to other governments through the trade agreement, but they are accountable to their constituents. Protecting the local economy is always the priority of provincial governments.

A 2001 Certified General Accountants report entitled “Canada’s Agreement on Internal Trade: It Can Work if We Want it to”, cites three major problems inherent in the concept and structure of the agreement; the need for consensus, the lack of public awareness and accessibility and inadequate support from governments (Certified General Accountants of Canada, 2001: 15).

*1) The Need For Consensus:*

The efficacy of the AIT agreement lies in the fact that it is a pan-Canadian, federal / provincial and territorial agreement but it is limited in its mandate to specific areas and focuses upon incremental consensus-driven change. It is through this universal and consensus-driven

approach that the agreement draws its greatest strength and legitimacy; however the difficulty of reaching a consensus has resulted in dramatic impairment of the scope and responsiveness of the agreement. The refusal of one government undermines the legitimacy of all (Ibid: 15-16).

*2) Lack of Public Awareness and Accessibility:*

The agreement may be between governments, but its purpose is to serve the public, specifically businesses by eliminating trade barriers. In reality, the agreement remains virtually unknown to the public at large and those for whom it is intended to serve. Furthermore, the agreement is difficult to understand and the process of dispute resolution is long, complicated and expensive. It leaves citizens dependent upon governments to negotiate the gauntlet of bureaucracy and these government officials are under funded (Ibid.).

*3) Inadequate Commitment from Governments:*

Related to the other two criticisms, the credibility of the agreement is entirely reliant upon the level of commitment that governments show to it. The dedication to the principles and processes of the agreement must be unequivocal. Furthermore, the commitment must be supported through more adequate funding in order to truly fulfill the governments' role in making this agreement accessible to the people who it is meant to serve. Finally, there is a conflict with using existing intergovernmental structures to administer, negotiate and promote the agreement, as some of these departments may be more inclined to promote the status quo rather than the principles of the agreement (Ibid.).

Robert Knox states that he regrets the lack of enforcement and weak dispute resolution mechanisms built into the agreement. Of this he states, "... governments, they're so thick-skinned that they don't give a damn. The notion that somehow having an agreement like this in the public domain would cause governments to do things that they didn't want to do was really

naive." (McClearn: 31-37). Despite the apparent naiveté, governments remain publicly committed to the AIT agreement and to eliminating internal trade barriers generally, although progress at the negotiating table has been slow due to a lack of transparency and weak government commitment.

Article 1800 of the AIT agreement entitled 'Trade Enhancement Arrangements' recognizes the need to allow provinces to seek additional, more specific trade agreements between one or more other provinces that go beyond the provisions of the AIT. The provision states:

- 1. The Parties recognize that it is appropriate to enter into bilateral or multilateral arrangements in order to enhance trade and mobility.*
- 2. This Agreement shall not prevent the maintenance or formation of a trade enhancement arrangement where:*
  - (a) the arrangement liberalizes trade beyond the level required by this Agreement;*
  - (b) there is full disclosure of the details of the arrangement to all other Parties at least 60 days prior to its implementation; and*
  - (c) the signatories to the arrangement are prepared to extend the arrangement within a reasonable time to all other Parties willing to accept the terms of the arrangement. (Internal Trade Secretariat, 2007b).*

This article of the agreement is significant for the implications it would have in the future of internal trade. The article was meant to allow for flexibility in addressing bilateral or regional trade issues. The result has been that it may be easier to supplement the AIT with bilateral agreements, rather than reform the AIT itself.



## **2.6 Future Prospects for the AIT**

On April 1, 2007, the bilateral trade agreement called the Trade, Investment and Labour Mobility Agreement (TILMA) between British Columbia and Alberta came into effect. This agreement was more comprehensive than the AIT and has a financial penalty enforcement mechanism of up to five million dollars. The TILMA was in part a response to the perceived failures of the AIT; however, response to it has been mixed and has created a dichotomy in policy preferences between provincial governments. Some provinces have shown a favour of a Pan-Canadian approach, such as reform of the AIT or the Council of the Federation, whereas some see the TILMA and bilateral or regional agreements as an excellent way to supplement the AIT.

### **2.6.1. The Council of the Federation**

Upon its creation in 2003 the Council of the Federation (COF), a representative body of provincial premiers, stated as one of its primary mandates the strengthening and full implementation of the AIT agreement. On February 23, 2004 it issued its “Internal Trade Workplan” that detailed the provinces’ commitments to the AIT. Ironically as the federal government championed the creation of the AIT ten years before, it was the provinces who renewed the commitment to the agreement and whom promised to fulfill its commitments.

In no small part due to the TILMA, the Council of the Federation has renewed a reform agenda and has reaffirmed provincial interest in making freer internal borders a greater priority. In August of 2007, the COF adopted a five-point plan for improving the Agreement on Internal Trade (Macmillan and Grady: 1). This five-point plan was a response to perceived weaknesses in the AIT and built upon the perceived strengths of the TILMA. On August 10, 2007 the Council of the Federation proposed the following five improvements to internal trade.

- 1. Labour Mobility:** *Premiers agreed that governments must work to bring all regulated occupations into full compliance by April 2009, and direct Labour Market ministers to ensure resources are in place to facilitate negotiations and to develop a compliance and communications strategy so that all remaining regulated occupations are aware of this requirement. Premiers directed senior officials to provide them with a list of non-compliant occupations by December 2007. Premiers further agreed to consider legislative action to ensure full compliance, should some occupation groups fail to comply voluntarily.*
- 2. Dispute Resolution:** *Premiers direct Ministers Responsible for Internal Trade to develop an effective enforcement mechanism. The goal is to implement panel results successfully without resorting to the court system and will include an appeals mechanism. The focus is first on Government-to-Government dispute resolution process, with future work on the AIT's Person-to-Government mechanism to be informed by the results of this work. Ministers will establish guidelines for monetary penalties up to five million dollars that reflect the seriousness of the violation, the magnitude of the impacts on the market(s), and the population of the jurisdiction involved. Ministers are directed to incorporate amendments on the dispute resolution process to the AIT by December 2007.*
- 3. Energy:** *Premiers will establish a negotiating group of ministers to reconcile and finalize wording for the Energy chapter of the AIT and report proposed wording to the Council of the Federation by December 2007.*
- 4. Agriculture:** *Premiers direct Agriculture Ministers to undertake immediate work on an Agriculture and Food Goods Chapter and report back to the Council of the Federation with a progress report on wording by December 2007, with final wording to the Council at its next meeting. The Ministers' work needs to take into account the consultations on the future of agriculture currently taking place across the country, as well as international negotiations where appropriate. The completed Agricultural and Food Goods Chapter must include all technical measures, while ensuring that the new agreement does not interfere with Canada's orderly marketing systems.*
- 5. Reconciliation of Regulations:** *Premiers agree to harmonize transportation regulatory codes and eliminate those standards and regulations that are unjustifiable barriers to trade in the transportation sector and instructed ministers responsible to do this work by July 2008. (Agreement on Internal Trade Secretariat, February 21, 2008)*

The final implementation date for these improvements to the AIT was set for April 1, 2009, the same day that the TILMA came into full effect.

The Federal Government has no seat on the COF, and consequently the provinces are able to deal with trade matters without federal intervention in their deliberations. Nevertheless, the provinces cannot totally disregard the views and preferences of the federal government on

trade issues, due to their own trade and commerce powers among others. Despite the absence of the federal government, the COF has had a substantial influence in shaping the discussions and agreements on the elimination of inter-provincial trade barriers since this time and has renewed interest in reforming the AIT. Despite this renewed effort, significant changes have still been few and far between.

### **2.6.2 Reform Within the AIT**

On June 10, 2008, the Committee on Internal Trade (CIT), made up of Federal / Provincial / Territorial Ministers responsible for Internal Trade met in Vancouver. The CIT was created out of the AIT and meets annually to review trade policy. At that meeting, the ministers gave an update on their progress to “resolve the outstanding issues and move the agenda forward to strengthen the AIT.” (Ibid.) They also made the following important decisions:

- The Committee agreed to proceed with external consultations relating to amendments to the Labour Mobility Chapter of the AIT aimed at gaining full labour mobility compliance with AIT by the end of the year;
- Ministers approved an Eighth Protocol of Amendment to the AIT that strengthens compliant procedures applicable under Chapter Five on procurement;
- Ministers agreed to commence negotiations to add Nunavut as a signatory to the AIT in an expedient manner (Nunavut is not a signatory of the AIT, but has observer status);
- Finally, and perhaps most importantly, the Ministers reached a consensus on a dispute resolution enforcement mechanism involving monetary penalty tiers that will reflect the diversity of population sizes and on the amount of time that must pass before a measure may be re-challenged. They also agreed to establish a process to deal with outstanding disputes under the AIT (Ibid.).

The Committee on Internal Trade has shown that the provinces, territories and even the federal government have been serious about their work to make the AIT fulfill the vision upon which it was created, comprehensive labour and trade mobility across Canadian borders in regard to 11 major economic areas. However, it has also underscored the overlap of institutions and committees that continue to exist despite the AIT. The Committee on Internal Trade and the COF both are attempting to achieve the same goal, but one includes the federal government and the other does not. The overlap results in an apparent abundance of commitments and a notable absence of action.

## **2.7 Conclusion**

This examination of the AIT reveals the complexity of the intergovernmental, interdepartmental, and inter-organizational facets of the internal trade policy field. This complexity has contributed to the challenges and delays in resolving what at times seem to be intractable problems. The apparent failures of the AIT have been in its disconnect from the citizens and its insistence upon compromise rather than enforcement. Progress has been undermined by regional interests and the incremental nature of a confederated policy approach. Committees such as the Council of the Federation and the Committee on Internal Trade are dedicated to progress and have shared goals, but the absence of actual progress reveals fundamental challenges with the intergovernmental dynamics that currently exist in dealing with those problems. Subsequent chapters of this thesis will examine the TILMA in the context of the AIT. Furthermore, evaluations will be made as to whether the TILMA is truly a departure or a natural reaction in the evolution of internal trade policy established under the AIT.

### **Chapter 3: The Trade, Investment and Labour Mobility Agreement:**

#### **B.C. and Alberta Case Study**

##### **3.1 Introduction**

On April 28, 2006, the governments of British Columbia and Alberta signed a landmark economic and trade agreement. The agreement, known formally as the Alberta-British Columbia Trade, Investment, and Labour Mobility Agreement (the TILMA), would create one integrated economy for the two provinces by April 1, 2009. This trade agreement was important due to the fact that it was a bilateral agreement, was comprehensive in nature, and it would be enforced by an independent dispute resolution panel. The governments of British Columbia and Alberta had positioned themselves as leaders in policy innovation and proactive in the fight for economic liberalization in the midst of a western economic boom. This chapter examines the purpose of the TILMA, its provisions and the political process utilized by the Governments of Alberta and British Columbia to consult the public and stakeholders and to implement the agreement. This will give context to the agreement and explore whether the TILMA was a unique or important agreement and why.

##### **3.2 Purpose of the TILMA**

As the previous chapter suggests, since 1995, Canadian inter-provincial trade policy has been governed by the Agreement on Internal Trade, or AIT. The AIT has been criticized for its slow progress, which is primarily due to the fact that it has no binding dispute resolution mechanism to hold parties accountable, but rather relies upon a conciliatory and dialogue based dispute resolution process. The TILMA was created largely in response to the perceived failures of the past attempts at removing internal trade barriers, such as the AIT.

Progress on inter-provincial trade and mobility issues between provinces has historically been ongoing and incremental. Even large initiatives such as the TILMA are done in an incremental fashion. On October 8, 2003, the first such step towards the creation of the TILMA occurred. On that date, following a joint cabinet meeting, the provinces of Alberta and British Columbia signed a protocol of understanding. This protocol committed the provinces to working towards expanding and improving joint initiatives to enhance trade, labour mobility, and investment between the provinces (TILMA Trade Secretariat, April 14, 2010a). On May 26, 2004 after another joint cabinet meeting, the provinces unveiled an Internal Trade Framework Agreement. This framework agreement developed the general goals and principles governing any future joint policies, as well as gave context as to where these bilateral negotiations fit within the provisions of the Agreement on Internal Trade (TILMA Trade Secretariat, June 13, 2008). On March 18, 2005 the third joint B.C. / Alberta Cabinet meeting took place resulting in the announcement of several agreements on various measures, such as pine beetle control and water management (Ibid.). On April 28, 2006, the premiers of Alberta and British Columbia signed the TILMA. On April 1, 2007 the agreement became binding upon the provinces. On April 1, 2009, the TILMA became binding upon municipalities, academic institutions, school boards and health authorities (MASH sector) (TILMA Trade Secretariat, April 14, 2010a). The time in between was deemed a ‘transition period’ during which the agreement would be taken to the public and stakeholders and any concerns would be negotiated.

It is important to note that although the TILMA is the most comprehensive internal-trade agreement to go beyond the provisions of the AIT it is by no means the only one. As was previously stated, Article 1800 of the AIT agreement allows for supplemental agreements. On April 1, 2007, the AIT secretariat reported that there exist eighteen other inter-provincial

agreements created as far back as 1989, such as the Atlantic Provinces Procurement Agreement and the Ontario / Quebec Agreement on Labour Mobility, all of which impose more stringent requirements than the AIT. This reveals that supplementing the AIT is not a new, or unforeseen policy choice, but a built-in solution to the problem of national governance and regional interests. Although the TILMA is not unique as a bilateral trade agreement, it is notable as a shift in both depth and scope of its provisions (Internal Trade Secretariat, 2008c).

There are two types of trade agreements, positive list and negative list agreements. Positive list agreements are those such as the AIT that explicitly address certain areas, such as labour regulations, and the agreement only applies to those areas. Negative list agreements, such as the TILMA are those that apply to all areas unless specifically excluded. The TILMA is the first agreement of such a comprehensive nature in Canada, and therefore supersedes all those that came before it, including the AIT. This important distinction is touted by some as the greatest strength of the agreement, or as a sledgehammer approach to relatively small and specific policy problems. What is undeniable, however, is that the TILMA represents a shift in the method and mechanisms chosen for conducting internal trade policy in Canada.

One important factor in the TILMA is the way it deals with conflicting or pre-existing agreements or legislation, such as the AIT. Article 1, subsection 1 and 2 of the TILMA addresses the relationship that the agreement has with the AIT agreement. The TILMA states:

*ARTICLE 1:*

- 1. This Agreement is established pursuant to Article 1800 (Trade Enhancement Arrangements) of the Agreement on Internal Trade, which permits the Parties to enter into additional arrangements to liberalize trade, investment and labour mobility beyond the level required by that agreement.*
- 2. In the event of an inconsistency between any provision in Parts II, V and VI of this Agreement and any provision of the Agreement on Internal Trade, the provision that is more conducive to liberalized trade, investment and labour mobility prevails between the Parties. In the event that such a provision of the Agreement on Internal Trade is*

*determined to be more conducive to liberalized trade, investment and labour mobility, that provision is hereby incorporated into and made part of this Agreement. (The TILMA Trade Secretariat, July 2, 2008)*

These provisions of the TILMA are important for Canadian internal trade policy, as they indicate in no uncertain terms the supremacy of the TILMA to all other trade agreements except in cases where the other agreements are seen to be more favourable to trade. The only relevant value of a trade policy is the extent that it fosters more trade. The purpose of this provision is to remove exceptions, claims of necessity and other restrictive policies that had previously allowed governments to drag their feet on policy changes. This, in addition to a binding dispute resolution, makes the TILMA an extraordinarily powerful piece of legislation, and one that governments may legitimately find threatening to their sovereignty. The litmus test for trade policy would no longer be the will of constituents or the mandates of governments, but the liberalization of trade as interpreted by an unelected dispute resolution panel.

The only partial exception to the comprehensive nature of the legislation is contained within Article 6 of the TILMA where it does contain some provisions for “Legitimate Objectives” that may justify restrictive trade policies, but these are subject to heavy limitations.

*1. A Party may adopt or maintain a measure that is inconsistent with Articles 3, 4, or 5, or Part II(C) provided that the Party can demonstrate that:*  
*a) the purpose of the measure is to achieve a legitimate objective;*  
*b) the measure is not more restrictive to trade, investment or labour mobility than necessary to achieve that legitimate objective; and*  
*c) the measure is not a disguised restriction to trade, investment or labour mobility. (Ibid.)*

These exceptions are both extremely limited and are vague as to what they or may not include. This will certainly cause challenges when the provisions are brought before the dispute resolution panel for interpretation. What is clear is that the burden of proof is placed upon the



government to prove that their trade policies are as liberalized as possible or limited within very narrow, but subjective guidelines.

The TILMA dispute resolution process is a variant of the mechanism used by the United Nations Commission on International Trade Law (TILMA Trade Secretariat, June 13, 2008b). The TILMA includes an institutionalized and permanent three step dispute resolution process, which includes dispute avoidance; consultation; and finally, only as a last resort, resolution through an impartial panel. If a government does not change a measure found to violate the TILMA, a dispute panel may impose a financial penalty. The penalty can be any amount up to five million dollars and would apply only to the provincial governments of Alberta and B.C. (Government of Alberta, 2007).

The dispute resolution panel is a vital aspect of the TILMA as it distinguishes it from other internal trade agreements that came before it. The dispute panel will only be used as a last resort after the processes of avoidance and consultation have been unsuccessful. The panel has the power to impose a penalty of up to five million dollars, however, only if the policy in violation is not changed by the government in question. To reduce the likelihood of abuse of the process and unnecessary litigation against governments, the panel may at their discretion charge the full cost of the dispute process to a losing complainant. Furthermore, only one complainant may bring a case against any particular matter at any one time. This will allow the situation to be resolved and avoid multiple penalties to governments; however a government may be penalized multiple times for the same offence if changes are not made. Therefore, if a government fails to comply with the TILMA after a ruling, the panel may re-convene to rule as to whether further financial penalty is appropriate (The TILMA Trade Secretariat, June 13, 2008a).

The composition of the dispute resolution panel is of key importance for the legitimacy and the effectiveness of the process. Both provinces have appointed five members of the public to the dispute resolution roster. From that roster, for every dispute each province will choose one member from the other province's roster to be on the panel. For example, Alberta will choose a member from the five appointees from British Columbia, and vice versa. The two panellists chosen then choose one member from either roster to act as Chair (Ibid.).

### **3.3 Provisions of the TILMA**

The TILMA, as previously stated, is a unique animal in the context of Canadian inter-provincial trade policy in that it is comprehensive in its scope. Although there are certain focuses, it applies to all areas of internal trade policy with very few exceptions. This area of the legislation is deserving of close scrutiny in order to understand the extent and limitations of the legislation. Below is a summary of the scope of coverage, as well as the exceptions as outlined on the official TILMA literature.

#### **3.3.1 What the TILMA Covers**

The Trade, Investment and Labour Mobility Agreement removes impediments across all economic sectors. The agreement is comprehensive, applying to all government measures (e.g. legislation, regulations, standards, policies, procedures, guidelines) that have implication upon trade, investment and labour mobility. Special provisions have been established for certain economic sectors covering investment, business subsidies, labour mobility, procurement, energy, and transportation. Although the agreement has special provisions for these sectors, this has no bearing on the breadth of its coverage as it covers trade, investment and labour mobility in all economic sectors (The TILMA Trade Secretariat, July 2, 2008).

### 3.3.2 Legitimate Public Policy Goals

The governments of Alberta and B.C. may enact laws, regulations and standards that do not meet the TILMA's requirements in order to achieve some specific 'legitimate objectives' in several key public policy areas. These are:

- *public security and safety*
  - *public order*
  - *protection of human, animal or plant life or health*
  - *protection of the environment*
  - *conservation and prevention of waste of non-renewable or exhaustible resources*
  - *consumer protection*
  - *protection of the health, safety and well-being of workers*
  - *provision of social and health services within a province*
  - *affirmative action programs for disadvantaged groups*
  - *prevention or relief of critical shortages of goods essential to a province*
- (Ibid.)

The only requirement is that the laws, regulations and standards are as non-restrictive on trade, investment and labour mobility as possible. Essentially, this requires governments to consider the impact on trade, investment and labour mobility when developing all policies, and to ensure that any negative impacts are justified and necessary.

### 3.3.3 Exceptions

Both Alberta and British Columbia have agreed to exclude measures in several areas from the agreement. The provinces agreed to establish a Ministerial Committee to oversee the implementation of the TILMA, and this committee will review the exceptions to the agreement each year. Exceptions to the TILMA include measures relating to:

- Aboriginal peoples
- water, and services and investments pertaining to water
- taxation
- revenue generation, including royalties and mark-ups
- regulated rates established for the public good or public interest

- social policy, including labour standards and codes, minimum wages, employment insurance, social assistance benefits and worker's compensation
- disposition of rights, exploration and development and management or conservation of energy or mineral resources
- renewable and alternative energy
- management and disposal of hazardous and waste materials
- disposition of harvesting rights and management and conservation of forests, fish and wildlife (Ibid.)

In addition, each province has included specific exceptions to respond to unique needs and interests.

#### *Alberta*

- In agriculture, measures on regulated marketing and supply management related to poultry, dairy and egg production.
- Access and ownership of Power Purchase Arrangements under the Power Purchase Arrangements Regulation.
- The requirement that funds be maintained in an Alberta-based account under the Fair Trading Act and associated regulations.
- Residency requirements under the Fisheries (Alberta) Act and the Wildlife Act.

#### *British Columbia*

- Regulatory measures under the Natural Products Marketing (B.C.) Act which restrict trade or investment in agricultural products or production.
- Measures to ensure adequate insurance coverage for commercial vehicles.
- Measures relating to the use of dams, reservoirs and generation facilities, provided that these do not prevent access to electricity transmission facilities.
- Measures to ensure domestic electricity needs are met.
- Provisions of the B.C. Hydro Public Power Legacy and Contract Act. (Ibid.)

Although the agreement was signed on April 1, 2006, the agreement did not come into effect for provinces until April 1, 2007. Furthermore, from April 2007 to April 2009, there was a two-year implementation period before the agreement was enforced, during which the governments set aside to address certain challenges, such as establishing standards for areas that will become shared interests, such as job standards and other criteria in which there were differences. For example, within the agreement under “transitional measures” there are over one hundred job titles identified with proposals as to which standards will be applied. These

occupations have professional associations and regulatory bodies with which each province must agree upon a single set of standards, and training must be revised in education systems (Ibid.). The success of this transition period would require careful consultation with stakeholders at all levels, and ongoing engagement of regulatory bodies and governments.

### **3.4 Politics of the TILMA**

#### **3.4.1 Proponents of the TILMA**

In September 2005, the Conference Board of Canada released an independent assessment prepared for the British Columbia Ministry of Economic Development entitled “An Impact Assessment of the B.C./Alberta Trade, Investment and Labour Mobility Agreement”. In their assessment, the Conference Board surveyed businesses in eleven different industry sectors and seven different regions in the province as well as government organizations in order to measure the impact that they felt that such an agreement would have on the province. Of twenty-four surveys sent to these external stakeholders, ten were submitted, and these ten surveys were used as the subject of the report as well as part of the impact analysis from which the conclusions were based (The Conference Board of Canada, 2005: 28-31). The report concluded that “the TILMA has the potential to add \$4.8 billion to real GDP and create 78, 000 new jobs in the province.” (Ibid: 38). This number was widely touted by the governments of B.C. and Alberta to promote this agreement and has been the centerpiece for the case for the adoption of the TILMA.

Not surprisingly, a year later the Conference Board released another report recommending, without ever mentioning it by name, every fundamental aspect of the TILMA to be adopted across Canada. In 2006 the Conference Board of Canada released a report called “Death By a Thousand Paper Cuts: The Effect of Barriers to Competition on Canadian Productivity” that made recommendations to reduce domestic non-tariff barriers (NTB’s) to

internal trade. Recommendations included:

1. Free trade should be established as the standard for inter-provincial trade agreements, and a strong evidence-based case should be required for specific barriers to be permitted. The current practice tends to create loopholes for regional interests.
2. The existing dispute settlement mechanism of the AIT needs to be made binding. Currently, dispute panel recommendations can be ignored, or circumvented through offsetting local legislation, due to the absence of an enforcement mechanism.
3. Agreements among and between provinces should be encouraged as a way to make progress on reducing internal NTBs. Bilateral or multi-provincial agreements could circumvent roadblocks created by one or more other provinces, and could serve as positive models for Canada-wide action (Darby, 2006: ii).

Proponents of freer trade concede that certain regulations are necessary in order to preserve health, protect the environment and maintain safety standards. They also believe that the current internal trade system in Canada goes well beyond that level of regulation and is detrimental to the economic health of the country. For example, analysts at the Fraser Institute have said the following of the benefits of the TILMA:

*The combination of rich resource endowments and, more importantly, smart, productive economic policies in British Columbia and Alberta have resulted in an economic boom in the two provinces. Even before the TILMA was signed, most economists were expecting western Canada to continue to outperform central Canada for the next few years. The new Trade, Investment, and Labour Mobility Agreement and its accordant economic efficiencies, which will be gained by eliminating artificial barriers to trade, will mean even stronger economic performance in B.C. and Alberta. The two provinces' tax policies were already a model for the rest of Canada. Now their trade policies will become yet another pillar supporting an integrated, robust economy. All other Canadian jurisdictions would be well advised to follow the path of the two western-most provinces. (Clemens, Palacios and Masse:1)*

Closer examination makes these claims less than certain, as there are a wide variety of predictions and opinions on what the long term impact of this agreement will be. In fact one of the most controversial issues surrounding the TILMA is the difficulty of measuring the benefits or predicting the consequences of such an agreement.

### **3.4.2 Critics of the TILMA**

In their 2005 assessment of the potential impact of the TILMA on the B.C. economy, the Conference Board of Canada predicted the impact of the TILMA to be an increase of 3.8 percent of total GDP, or \$4.8 billion dollars in British Columbia alone (The Conference Board of Canada, 2005: 38). In contrast, research conducted for the 1985 Macdonald Royal Commission concluded that inter-provincial trade barriers cost no more than 0.05 percent of national GDP, and since this time, inter-provincial trade has grown and initiatives such as the AIT have eliminated some of the most pressing barriers (Lee and Weir, 2007:1). Probably more accurate would be estimates somewhere in between these two extreme predictions, such as the October 2007 C.D. Howe institute report that estimated that the removal of barriers would increase Canada's GDP by less than 0.5 percent (Campbell, 2007: A-16). Finally, and most recently, Denis Gauthier, the federal Finance Department's assistant deputy minister of economic development and corporate finance, told a Senate committee on banking, trade and finance that inter-provincial trade rules cost Canada about 0.25 percent of its GDP (Rennie, 2007: B6). Proponents of the TILMA point out that even the relatively modest estimate of 0.25 percent of national GDP amounts to an annual drain of three billion dollars to the Canadian Economy that is lost unnecessarily. Critics of the TILMA use these figures to discredit the provincial figures of the Conference Board of Canada that were touted by the provinces of British Columbia and Alberta when publicly promoting the TILMA.

In February 2007, the Canadian Centre for Policy Alternatives B.C. office released a rebuttal to the Conference Board's assessment. The report entitled "The Myth of Interprovincial Trade Barriers and the TILMA's Alleged Economic Benefits" asserts that the Conference Board's study is fundamentally flawed, and in fact the TILMA is a solution to a problem that is not really a problem at all. Furthermore, they contend that the costs of the TILMA would far outweigh the benefits (Lee and Weir: 1). Some of the flaws cited are:

- It makes no attempt to list, or estimate the cost of, trade barriers between provinces;
- Rather than using standard economic techniques, the Conference Board infers huge benefits from a tiny survey of business organizations and government ministries;
- The Conference Board doubles its estimate of TILMA's benefits through a simple arithmetic error. Even after correcting this error, most of the projected gains are from industries exempt from the final agreement or from industries that do not primarily engage in interprovincial trade (Ibid.)

These shortcomings and the lack of sure data in its place puts into question the real value of an agreement such as the TILMA and questions whether there is really an internal trade problem at all.

### **3.5 The Implementation Process**

The TILMA is a major step forward in the economic integration of B.C. and Alberta. In addition to the TILMA the two governments signed memorandums of understanding covering four additional areas identified for further negotiation and cooperation, including research, post-secondary education, and provincial parks. The two provinces also agreed to future negotiations to extend the agreement to include financial services, municipal governments, and Crown Corporations (Ibid.). The proponents of the TILMA argue that once it is fully implemented, the



joint economies of British Columbia and Alberta will compete directly with Ontario, the country's largest and richest economy. In 2005, the combined nominal GDP of the two provinces was \$383.9 billion, which was approximately 71.4 percent of Ontario's economy. The combined B.C. and Alberta economy is easily larger than that of Quebec stood at \$274.9 billion in 2005 and is currently Canada's second largest economy. In addition, western Canadian GDP growth is expected to outperform that of both Ontario and Quebec over the next several years (Clemens, Palacios and Masse: 1). The growth is even more prominent when population is examined. The combined population of B.C. and Alberta was 7.5 million in 2005, roughly 60 percent of Ontario's 12.5 million, and just slightly less than Quebec's 7.6 million. Furthermore, population growth in B.C. and Alberta is stronger than in both of those two provinces.

According to Statistics Canada, the combined populations of B.C. and Alberta would reach 62 percent of Ontario's population in 2010 and 65 percent of it in 2025 (Ibid.). Part of the reason for this relative growth is migration. In 2005, Ontario had a net out-migration of roughly 8,000 people, while B.C. and Alberta combined attracted a net of 24,000 people (Ibid.). These trends are expected to continue. For all of these reasons, a regional agreement between these two provinces seemed logical.

After signing the TILMA in April of 2006, the governments of Alberta and B.C. showed that they were serious about undertaking the implementation process immediately. In December 2007, the provinces agreed to parallel legislation allowing for teacher mobility between provinces (Government of British Columbia, 2008). Furthermore the Alberta and B.C. legislatures respectively each introduced legislation enabling them to enact the TILMA. This legislation had three major immediate impacts: 1) Corporations would no longer have to have head offices in each province in order to operate; 2) Reconciliation of corporate registrations,

where businesses would be able to conduct business freely in each province and only produce one annual report; 3) and the Alberta legislation also modified the Government Organization Act that combined all the provisions of TILMA into one legislation (Gilbert, May 5, 2008). These actions showed specific, but significant progress in fulfilling the mandate of the TILMA. At the same time, the Province of Alberta completed municipal community consultations about the agreement with selected municipalities, academic institutions, school jurisdictions, and health authorities and the results were incorporated into a series of protocol amendments enacted before the TILMA could come into effect (The TILMA Trade Secretariat, July 3, 2010b).

### **3.6 B.C. and Alberta Municipalities**

Both Alberta and British Columbia's provincial governments downplayed the effect that the TILMA would have on municipalities and other local governance entities. This led them to sign the TILMA without any public consultations. Moreover, very little consultation was undertaken with municipalities and other sub-provincial governance bodies before the TILMA came into effect in 2007 for all sectors except the municipal sector. The limited consultations with the municipal sector were justified on the grounds that local governments would have two years to express any concerns before the agreement came into effect for the municipal sector in April of 2009 (Ibid.). This consult-after-the-fact approach would be unique to British Columbia and Alberta as the first two provinces to attempt the deal.

The provincial governments of Alberta and British Columbia had different approaches to consulting with stakeholders and municipalities. Nevertheless, both provinces did very little stakeholder consultation until after the agreement was signed, which is why they built into the agreement a two year implementation period. Whereas Alberta chose to do public consultation in a formalized process, the British Columbia approach appeared to be more ad-hoc in engaging

specific stakeholders to permit them to express their opinions on particular regulations, standards or other changes that were being made.

### **3.6.1. Alberta Municipal Consultations**

In Alberta the consultation process was formalized in a process called the ‘Alberta Consultative Initiative’. This initiative was created to gain feedback on the TILMA in order to respond to the needs of the MASH sector. Several regional sessions took place, in which 209 individuals representing various sectors participated. Further to this, two follow up sessions took place in order to ensure that the findings of the consultation process reflect the interests of what was brought forward by stakeholders. These follow up sessions were completed on August 30, 2007 (Ibid.). The consultations would determine the degree to which the TILMA applies to municipalities, and their role within the agreement, which to this point was not explicit. Concerns were expressed by municipal associations in each province regarding the negative effect that the TILMA would have on local governance.

The transition period between signing the TILMA and when the TILMA became binding upon municipalities would prove to be a challenging time for local and provincial governments. During the Alberta consultations the Alberta Urban Municipalities Association (AUMA) made a submission to the Alberta department of International, Intergovernmental and Aboriginal Relations who were responsible for the consultations. In their submission dated June 29, 2007, they made five recommendations relating to procurement levels, licensing exceptions and other areas of ambiguity in the agreement as well as asking for assurance that there would be opportunities for further input (Alberta Urban Municipalities Association, 2007).

At its March 2008 meeting, the AUMA Board of Directors passed the following motions regarding the TILMA:

1. That the AUMA Board approve that a letter be sent to the Minister of IIR asking that the TILMA transition period end one year following the finalization of the wording of the MASH portion of the TILMA;
2. That any other modifications to the TILMA be given one year transition period before implementation; and
3. That the AUMA Board approve that the letter from AUMA to the Minister of IIR regarding the TILMA, include the request that municipal autonomy and reference to Alberta's MGA (Municipal Government Act) be made explicit in the MASH portion of the TILMA (Alberta Urban Municipality Association, 2008).

### **3.6.2 British Columbia Municipal Consultations**

The Union of British Columbia Municipalities (UBCM) had been involved since 2005, when the provincial governments informed the organization that an agreement was in the process of being negotiated, but they were not formally included in these negotiations previous to the signing of the TILMA (UBCM Executive, 2007: 3). During the interim the municipal associations were participating in debates and expressing concerns from their members to the government largely on an ad hoc basis. Letters were exchanged from the Minister to the UBCM regarding their concerns with the ambiguity of the agreement and the potential implications upon municipal governance and the need for more consultation and engagement was expressed. On September 14, 2007, the Province and the Municipalities signed a consultation agreement that required the province to provide updates to the municipalities regularly as well as offered UBCM a representative to have observer status at the negotiating table (Ibid: 5).

After consulting legal interpretations, reviewing reports commissioned in other jurisdictions and consulting members, the British Columbia Urban Municipality Association had

determined that the TILMA as presented was unacceptable (Lindstone, July 8, 2008). In September 2007, the same month the consultation agreement was signed, UBCM members voted almost unanimously in favour of a resolution urging the provincial government to either exempt municipalities from the agreement, or withdraw from the agreement completely (Anderson, 2007: C3). In response B.C.'s Minister of Economic Development Colin Hansen stated the following:

*I think these resolutions that have come before the U.B.C.M are a product of a lot of misinterpretation that has been targeted at municipalities ... If I were a city councillor and I am receiving information that says that the TILMA is going to prevent my city council from passing bylaws ... I would be concerned as well. (Ibid.)*

He went on to assure that the TILMA would not have that effect (Ibid.).

Consultation with MASH sector stakeholders in British Columbia and Alberta continued up until the day that the TILMA became binding upon local governments on April 1, 2009 (TILMA Trade Secretariat, July 3, 2010b). In the months leading up to the April 1<sup>st</sup> deadline, the provinces came out with three protocols of amendment to the TILMA in as many months. These amendments represent major concessions in the scope and constraints of this agreement upon municipalities. These processes and concessions are explored further in the following chapter where it examines in greater detail the implications that this period had on other jurisdictions.

### **3.7 Conclusions**

The TILMA was signed in 2006 by the Liberal and Progressive Conservative governments of British Columbia and Alberta respectively. These were multi-term, majority governments in a time of great economic expansion dubbed a 'western economic boom' and therefore had the political and economic justification to move forward with major economic policy initiatives. For this reason, the TILMA was signed without prior public consultation and

was built with an implementation period that would provide direct consultations with MASH stakeholders under strict timelines. This process limited public criticism of the agreement and controversy until well after it was signed.

TILMA was a response to the perceived weaknesses of the pan-Canadian Agreement on Internal Trade, and was an attempt to comprehensively address labour mobility issues and internal trade barriers with a single agreement. Building upon the apparent weaknesses of the consensus-based AIT, the governments of Alberta and B.C. chose to make the TILMA a bilateral agreement to reflect the inter-connectedness of the economies, as well as build off of the western economic boom excitement. Furthermore, the TILMA was a response to the AIT in that it was built with an independent dispute resolution panel, which could implement financial penalties. The fact that TILMA was a bilateral agreement and was enforceable was a natural reaction to the AIT, but the comprehensiveness of the agreement was both unique and controversial.

Within months of the TILMA being signed, both the Alberta Union of Municipalities and the British Columbia Union of Municipalities stated that it was unacceptable to their members. This proved to be a significant blow to the forward momentum of the TILMA and would require a great deal of work to strike a correct balance between changing the agreement enough to make it workable for local governments and not compromising the comprehensiveness of the agreement. Without municipal government involved, huge barriers to zoning, investment and procurement would not be addressed by the TILMA and its utility as a truly comprehensive agreement would be diminished immensely. Alternately, if the changes were not made, the provinces would have lost the agreement completely as they, not municipalities would be financially liable for any violations of the TILMA committed by municipalities.

The initial MASH sector consultation process after the TILMA was signed was not a success. There was little outcome as a result of the subsequent public consultations, as the report promised was delayed and the negotiations were not public. It was not until the weeks leading to April 1, 2009, the time that the TILMA would apply to municipalities, that several amendment protocols were announced. These protocols illustrated the negotiations and the compromises that occurred behind closed doors. This period of internal turmoil and controversy was also the period in which the TILMA was being considered by Saskatchewan. Public consultations were held in Saskatchewan, and as the next chapter will reveal, this process and the related public pressures would shape the destiny of the TILMA in Saskatchewan.

## **Chapter 4: Saskatchewan and the TILMA**

### **4.1 Introduction**

As the next contiguous province in the west, Saskatchewan was seen as the most likely province to join this new free-trade area created by the TILMA. In late 2006 after the TILMA was officially signed by the governments of British Columbia and Alberta, the government of Saskatchewan announced that they would review the agreement as to whether it was appropriate for Saskatchewan to sign. The period that followed was marked by a dichotic public debate on the issue that was perpetuated by think-tanks and interest groups both for and against the TILMA. The TILMA debate in Saskatchewan was the first public consultation process on the agreement and was therefore important to the future path of the agreement. Saskatchewan's approval or disapproval of the agreement may have influenced greatly the subsequent perception and decisions of other jurisdictions. In the end the TILMA was rejected by the Saskatchewan government, but as soon as the TILMA was resolved a new agreement came on to the horizon, and on April 30, 2010, almost one year to the day of the full implementation of the TILMA, the provinces of Saskatchewan, Alberta and British Columbia launched the 'New West Partnership Trade Agreement'.

### **4.2 The Public Discourse on the TILMA in Saskatchewan**

The public dialogue over the TILMA in Saskatchewan was taken on by a mix of interest groups, academics and politicians and came in the form primarily of public debate in the media. The debate was split between interest groups and think tanks both for and against the agreement. Most notably, when brought to the public attention, the issue drew the traditional opponents and proponents of free trade into a public battle of ideals and interests. The challenge was that the debate was marked by overgeneralizations, myths and misconceptions due to the many



unknowns that come from such a broad agreement. The choice by the governments of Alberta and British Columbia to hold debate and negotiations with local governments and specific industries after signing the agreement was an opposite approach to that used in Saskatchewan. Saskatchewan's experience occurred in the public eye during the consultations happening in British Columbia and Alberta so the public interest was at its height. The evidence suggests that the choice to engage in a public process in Saskatchewan was strongly influenced by this highly politicized atmosphere. The following is a summary of some of the main arguments and important players who influenced the public debate in Saskatchewan.

Despite the fact that the TILMA was signed in Alberta and B.C. in April of 2006 with much promise and fanfare, there was almost no public debate that preceded it. Public debate did not occur until after the TILMA was tabled to the provincial internal trade ministers in September, 2006. Even with this, the debate regarding the TILMA in Saskatchewan was largely off the political and public policy agenda until December of that year.

In December of 2006, while the government was receiving the results of its own internal review conducted by the Conference Board of Canada, but which was not yet made public, policy think tanks and interest groups began to stir interest in the TILMA. That month the Saskatchewan branch of the Canadian Centre for Policy Alternatives released a publication urging the government to proceed with caution regarding the agreement, citing several concerns including the possible negative effect on democratically elected government, the lack of consultation and the potential impacts on social priorities. The author specifically concludes that the government should consult and investigate the potential implications of the agreement before signing (Gerlach, 2006). By February of 2007, the Council of Canadians and the Saskatchewan Federation of Labour both joined in their opposition to the agreement (Wood, 2007a: C-11).

The involvement of the Saskatchewan Federation of Labour in the TILMA debate was a pivotal moment that added an organized and public voice to the opposition of the agreement and compelled the government to consult with the public before committing itself to the agreement. On February of 2007, the Saskatchewan Federation of Labour began to actively lobby the government to say no to the TILMA. They launched a plethora of newspaper columns, presented to various committees and set out on a multimedia campaign called “TILMA Alert” to protest the comprehensive and business oriented approach of the agreement. Although some questioned that labour was simply fighting for its own self interest, the SFL was successful in bringing the debate to the public at this important stage as the government was internally reviewing the agreement, and added further influence when these organizations participated in public consultations held by a bi-partisan committee of the legislature (Mandryk, 2007a: A-8). The message of the Saskatchewan Federation of Labour was that the TILMA would put business interests before government’s and would result in a ‘race to the bottom’ for standards and regulations. As an organization that represented nurses, teachers, skilled tradespersons and other occupations that would require harmonization of standards within the TILMA to allow for labour mobility between provinces, the concerns of the SFL were widely quoted, and broadly felt through the member unions.

During the committee hearings in June of 2007, newspapers encapsulated the arguments both for and against. Again, the fears of labour were prominent, buoyed by members such as the Saskatchewan Teacher’s Federation, who stated that there was “no compelling reason” for the province to participate in the agreement. Furthermore, they expressed widely stated fears that as one of the occupations identified in the TILMA for harmonization, Saskatchewan would adopt the lowest standard of all the three provinces for Saskatchewan teaching certification (Hall,

2007: A-8). The fear that the TILMA may result in lower standards became a theme of the opposition movement. As Canadian Labour Congress economist Erin Weir was quoted as saying in the *Leader Post*, the TILMA was the policy equivalent of “going after a fly with a sledgehammer” (Mandryk, 2007b: B-7). The perception was that either the TILMA would have huge and far reaching effects that needed to be studied, or if the TILMA truly was benign, the benefits that were predicted from the agreement were overstated.

As the opposition to the TILMA was catalyzed by the SFL, there was an equal and opposite reaction by the TILMA supporters. As with many business and trade agreements, those who supported the agreement tended to be business interests and conservative think-tanks. In one news release, Saskatchewan Chamber of Commerce President Ralph Boychuk stated: “Saskatchewan businesses and people stand to gain incredible market access to the booming Alberta-B.C. economic region if the province signs onto the TILMA” (Saskatchewan Chamber of Commerce, 2007). In time, the Canada West Foundation, the Chamber of Commerce, the Canadian Federation of Independent Business and others came forward to support the inclusion of Saskatchewan in the agreement. The argument was that the agreement would mark a moment where Saskatchewan joins the ‘New West’ or is left behind. As one *Star-Phoenix* editorial stated “TILMA is too important to become a political football. With other provinces already clambering to join, Saskatchewan has to decide whether our twinned highways are to be used to connect us to the modern world or serve as a faster way to pass us by.” (The *StarPhoenix*, 2007: A-6). It was the looming prospect of an upcoming election in the fall of 2007, which may have ultimately changed the nature of the public debate.

As a result of the public consultations, and the public debate that resulted, the Saskatchewan Party opposition announced on June 28, 2007 that they would not sign on to the

agreement if elected. This was met with dismay from business groups who had previously enjoyed the Saskatchewan Party's support for the TILMA. Business interests chided the labour and left-leaning interest groups for looking out for their own entrenched interests and seeking the shelter of protectionism in favour of truly open competition (Seymour, 2007: A-8). Meanwhile, the Saskatchewan Party was keen to avoid fighting an election on an issue as divisive as the TILMA and to open a free-trade debate during an election in which they were heavily favoured to win.

When the Saskatchewan government announced in June of 2007 that it would not join the TILMA, the Canadian Federation of Independent Business expressed disappointment. Vice President, Saskatchewan and Agri-business, Marilyn Braun-Pollon stated "If the provincial government was truly committed to the economic prosperity agenda, then it would have signaled [sic.] to the Alberta and British Columbia governments that it was interested in having a seat at the negotiating table that would open markets, create jobs, and attract investment to Saskatchewan" (Canadian Federation of Independent Businesses, 2008). The labour movement saw this as a concession by the Saskatchewan Party that had initially shown support for Saskatchewan to join the agreement (Scott, 2008: D-3).

After the Saskatchewan Party publicly shifted its position, the labour movement declared victory and the NDP government announced it would not sign on to the TILMA, the business movement realized a more pragmatic approach was needed. The TILMA was off the table, but internal-trade reform was still in the spotlight. Business groups blamed the government for not being at the table early enough in the TILMA discussions to resolve the few issues that made the agreement unworkable for Saskatchewan. They blamed the government for not working to make the TILMA work for Saskatchewan (Wood, 2007b: D-2; Scott, 2008: D-1).

### 4.3 The Saskatchewan Consultation Process

In 2007, Saskatchewan weighed the pros and cons of the TILMA deal and, based upon expert analysis and public consultations they declined to sign on to the agreement in August 2007. In the process of deciding whether to join the TILMA or not, the Saskatchewan Government held public consultations and commissioned studies to evaluate whether the agreement was in the best interests of the Saskatchewan people. As previously stated, business groups such as the Saskatchewan Chamber of Commerce supported the TILMA and were vocal in their encouragement for the government to join the agreement and many made presentations to the public consultation process. Furthermore, the public consultations were paralleled by the commission of some of the few in-depth academic analyses of the agreement, and interestingly the results provide a similar dichotomy as to that which the dialogue had so far undertaken in the public sphere.

During the consultation process, the primary academic analysis that supported the TILMA was released by the Conference Board of Canada in December of 2006. This report concluded that despite some hardships such as losing local procurement preference from Crown Corporations and other benefits to local contractors, there would be a net gain to businesses in the province if Saskatchewan were to join the TILMA. Specifically, it concludes that:

*Overall, joining the TILMA has a potential to improve interprovincial trade flows and add to Saskatchewan economic growth. Once all net benefits from joining the trade agreement are realized, Saskatchewan has a potential to add \$291 million to its real GDP and create an additional 4,400 new jobs in the province. (The Conference Board of Canada, June 8, 2010: 44).*

Although the Conference Board of Canada's report did provide a strong case for joining the TILMA, there are questions about the impartiality of the Conference Board's assessment, as they had already come out in favour of the TILMA in previous reports, such as their publication

“Death By a Thousand Paper Cuts” previously mentioned. This report continued to be an influential endorsement of the agreement. Presumably, for this reason the Saskatchewan Government under Lorne Calvert hired two academics to provide independent analysis of the Conference Board’s report. These two analyses show the dichotomy of the debate surrounding the TILMA and offer an excellent case study of two experts who examined this one review of the TILMA and came out with two very different critiques, which would inform two very different policy directions.

In his analysis of the Conference Board of Canada’s report on the TILMA, Dr. John Helliwell questions the validity of the report’s projections. In it he states that the Conference Board’s projection of 4,400 jobs gained seems to be to be fundamentally flawed. He begins by assuming that they arrived at that number by basing it upon their projection that the TILMA will result in a 0.92 percent gain in provincial GDP, then calculating the number of workers required to produce that GDP and predicting that that many jobs will be created. This is extremely problematic because the projected gain in GDP is based upon increased efficiency in production and procurement, and therefore would result from a loss of redundant jobs, rather than be the cause of increased employment. This analysis undermines the optimistic predictions of both job creation and increased GDP that the Conference Board suggested (Helliwell, 2007a: 12). Nevertheless, none of the TILMA predictions are certain, as even Dr. Helliwell’s predictions are not representative of a consensus by any means but demonstrate the danger that was seen by over-reliance upon the Conference Board of Canada’s optimistic numbers previous to this increased scrutiny.

In contrast to this negative outlook, University of Saskatchewan economist Dr. Eric Howe estimated that because the Conference Board used the status quo as the proposed result of

Saskatchewan not signing on to the TILMA, it actually underestimates the net benefit that Saskatchewan would see. This is because Howe believes that if Saskatchewan did not sign on to the TILMA, it would put it at a competitive disadvantage compared to Alberta and B.C., which are some of its largest trading partners, and therefore trade will decrease, rather than remain at the status quo (Howe, 2007a: 9). This interpretation differs greatly from the assessment of Helliwell and left the public and policymakers with three different interpretations of what the TILMA may mean for Saskatchewan.

To further the dialogue, but also add further layers of complication to the development of an objective analysis of the information, both Howe and Helliwell made a response to the others' analysis of the Conference Boards' report.

In Helliwell's assessment of Howe's analysis, he challenged the assumption made that the TILMA would absolutely benefit Saskatchewan simply by providing an economy of scale. He felt that the bilateral or trilateral nature of the agreement would create not freer trade, but a balkanization of Canadian trade. This would not benefit Saskatchewan, because it would create barriers to trade outside this regional bloc, and would also benefit Saskatchewan the least of the provinces involved as it is the smallest and therefore its trade agenda would likely be dictated by B.C. and Alberta. Helliwell proposed that a pan-Canadian strategy, such as the Agreement on Internal Trade would be a far better trade liberalization strategy for Saskatchewan because it would not replace provincial trade barriers with regional ones (Helliwell, 2007b).

To bring the dialogue full circle, in Howe's assessment of Helliwell, it is pointed out that the Conference Board's assessment was based upon survey results of businesses and public stakeholders. Among other arguments, Howe believes that the opinions of businesspersons should be taken seriously and given pre-eminence over that of academics (Howe, 2007b: 3). He

feels that to put trade decisions in the hands of politicians alone ignores the interest of businesses to act in their best interests. Quite simply he defers to the business professionals to act in their best interest by endorsing the TILMA, and that their interests serve all citizens by promoting prosperity.

Thus, the debate was far from clear, as interest groups both for and against the TILMA were armed with reports and statistics that seemed to support their arguments. These two analyses demonstrate the complexity of predicting benefits to such a broad agreement, and also the difficulty of making an objective decision when interests collide and conjecture is taken at face value. The governments were left to take this complex public debate and arguments on both sides of the issue and make a political choice as to whether the TILMA was appropriate for Saskatchewan. The official result was the rejection of the TILMA because it created uncertainty regarding provisions that did not allow for municipal investment incentives and other provisions related to Crown Corporation subsidiaries. The reality was likely that it had become too much of a political football because of the long drawn out debate and the governments preferred to move past it.

#### **4.4 The Saskatchewan Governments' Positions On The TILMA**

The Saskatchewan position on the TILMA has been ever changing and always ambiguous. The TILMA was first brought into the provincial political discourse in 2006, nearly three years after the two provinces entered into negotiations based upon the protocol of understanding signed on October 8, 2003. At that time the Saskatchewan Party was eager for the province to sign on to the agreement and criticized the NDP government for the existence of a western trade agreement in which the Province of Saskatchewan was not participating.



From early on the NDP government maintained that it would do its ‘due diligence’ in exploring the costs and benefits of the TILMA as well as consulting with businesspersons and the public in general before entering into the agreement. This cautious attitude was a source of frustration with the opposition Saskatchewan party, who advocated signing the agreement immediately. At the end of 2006, the Government of Saskatchewan undertook a quiet internal review of the TILMA and its potential impacts on Saskatchewan. The result was the report by the Conference Board of Canada that was later the subject of academic reviews, but very little public exchange as the reports were not released until April of 2007. The NDP government was content to let Alberta and B.C. lead, and Saskatchewan would follow only if it was seen in their long-term interest.

In the provincial legislature on March 26, 2007 Saskatchewan Party member Elwin Hermanson stated the following regarding B.C. and Alberta carrying out the TILMA without Saskatchewan:

*We see their economies moving forward. We see this government dragging its heels, afraid of the unions or whatever, afraid of their shadow, perhaps, Madam Speaker. But they have to study it and study it and study it.*

*Madam Speaker, there's no way that they'll sign on to the TILMA agreement before the next election. It's going to take a new government with some vision and with some hope and some optimism about Saskatchewan to do bold things like sign on to the TILMA agreement and get this province rolling. (Legislative Assembly of Saskatchewan, 2007a: 980).*

The opposition used the TILMA to depict the Calvert government as out of touch with other provinces and economically conservative in the light of an economic boom. The Saskatchewan Party often referred to ‘the new west’ and suggested that not joining the TILMA was indicative of the NDP’s propensity to be followers rather than leaders with economic reforms.

In April of 2007, the NDP released several reports on the TILMA, including the Conference Board of Canada report, as well as the two academic reviews of this report. The contents of these reports are discussed previously in this chapter, but the political consequences of these reports were significant. Until the release of these reports, the Saskatchewan Party was consistently demanding that Saskatchewan be at the table of the TILMA and be a leader of this new economic union, whereas the NDP government was content to weigh its options. With the release of these reports the Saskatchewan party maintained its demands for the government to act, and continued accusations that the NDP government were dragging their feet, although, they became more receptive to a public consultation process rather than immediately signing on to the TILMA (Legislative Assembly of Saskatchewan, 2007b: 1390).

On April 25, 2007, the NDP minister of intergovernmental affairs Harry Van Mulligan asked the Standing Committee on the Economy to conduct a formal inquiry on the state of internal trade in Saskatchewan. This committee, which included members from both sides of the legislature, would conduct public consultations across the province in order to receive presentations and gauge public interest and input into the future of internal trade in Saskatchewan. The major point of discussion was whether Saskatchewan should join the TILMA.

On August 1, 2007, the NDP Government announced that as a result of these consultations, and the organized opposition heard from labour groups and other interests, they would not pursue the TILMA. There were supporters of the agreement, and strong arguments that progress was lost, but the atmosphere of public scrutiny and backlash growing against the TILMA made the decision to join the TILMA a non-starter. The Government announced that it would instead focus upon reforming the existing Agreement on Internal Trade. Specifically,

they would examine, reduce or eliminate ‘nuisance’ regulations, and to develop closer working relationships with neighbouring regions and governments to establish stronger economic ties (Government of Saskatchewan, 2008: 11).

In June of 2007, the Saskatchewan Party still felt that the TILMA was on the table for the province, and that they may rethink it if elected, but only if the agreement was adjusted to better suit Saskatchewan (The StarPhoenix, March 16, 2008). During the November 2007 election, the TILMA was not in the forefront and the Saskatchewan Party was vague as to whether or not they would change the government’s position if they did form government.

On April 17, 2008, the newly elected Saskatchewan Party clarified their position on the deal when Premier Wall stated that the comprehensive nature and the ambiguity of the TILMA made it undesirable for Saskatchewan to join. Specifically, ambiguity surrounding the viability of certain tax incentives and provisions relating to Crown Corporation subsidiaries make the ‘take it or leave it’ approach in which the TILMA was offered was a non-starter (Hall, 2008). In legislature the day before he stated;

*We highlighted concerns last summer after some hearings in the province that were conducted by the appropriate committee of this House. We had some concerns with respect to the lack of clarity in TILMA on the treatment of subsidiaries of Crowns. Certainly Crown Corporations are fully contemplated in the TILMA, but the question around subsidiaries just remains unclear, as does our desire to pursue new-growth tax incentives and to have municipalities pursuing new-growth tax incentives.*

*We also couldn’t get a definitive answer as to whether that would be allowed in the TILMA. (Legislative Assembly of Saskatchewan, 2008: First Session– Twenty Sixth Legislature, VOL 50, no. 27A, 10.).*

Although these concerns were raised during the consultation process, the response from proponents of the TILMA was that the government should have been involved early enough in the process to address these concerns, and also there was recognition that municipal opposition had joined the labour-lead coalition against the agreement. The Saskatchewan Party was

entering its first term of government after a sixteen year rule of NDP government. A major policy reversal was not a politically sound decision after such a public division on the issue.

#### **4.5 Saskatchewan Municipalities and the TILMA**

Notably absent from the dialogue process from the beginning was the voice of municipal government. In early 2007, shortly after the TILMA was signed by the governments of B.C. and Alberta, Saskatchewan was in the midst of evaluating the agreement for the province. During this time the city of Saskatoon and city solicitor Theresa M. Dust was already raising questions about the impact that such an agreement could have on municipal governments.

On December 18, 2006, Saskatoon City Council began an inquiry into what impact the TILMA could potentially have on municipal governments if the Saskatchewan Government were to sign on. In February 2007, Dust tabled a short report to Saskatoon City Council. In this report the City Solicitor makes several important findings. Dust reported that despite the fact that the TILMA was written to include municipalities, engagement, consultation or fact-finding had not occurred at the municipal level in any jurisdiction, including B.C. and Alberta, where the agreement had already been signed. Furthermore, Dust raised concern that the intention was that municipal consultations and appropriate adaptations on behalf of municipal governments would be made in the two-year implementation period before the TILMA's full implementation in April 2009, but after the agreement had already been signed by the provinces. From a municipal perspective this was not acceptable. The research process also revealed a myriad of possible conflicts that the TILMA may raise against municipal jurisdiction (City of Saskatoon, April 29, 2008).

The fear raised by Mrs. Dust's report was the erosion of municipal governance. As it was presented the TILMA would attack any municipal bylaw that went beyond the restrictions of

provincial jurisdiction. Within the City of Saskatoon, for example, local choice issues ranging from pesticide and smoking restrictions that go beyond the scope of provincial and federal laws, to local bylaws and subsidies that help foster downtown economic growth may all be jeopardized by the TILMA claimed Dust. For these reasons the report recommended that the City of Saskatoon ask the province to exempt municipalities from the TILMA if it were to sign on to the agreement. The city also embarked upon a broader study of the municipal impacts of the agreement (Ibid.).

In the subsequent months, the Government of Saskatchewan embarked upon their consultation and fact-finding mission on the provincial impacts of the agreement. The resulting literature released on April 25, 2007, has been outlined previously in the Saskatchewan case study. The municipal perspective was not included in these consultations and for this reason on May 9 and 10, 2007, at a meeting of Saskatchewan Mayors and City Managers a decision was made to commission a report by the Estey Centre for Law and Economics in International Trade to investigate the impact of the TILMA on cities. The report's mandate was to provide: "an in-depth impact study of the potential effect of the TILMA on Saskatchewan cities" (Kerr et. al., 2008: 1). The study was to also include an "analysis of whether inclusion of cities in TILMA is the only option for dealing with internal trade issues at the municipal level, or whether a possible alternative would be to exclude cities from TILMA, while implementing internal trade agreement goals through amendments to The Cities Act" (Ibid.).

The report commissioned at that meeting of Mayors and city Managers was titled "A Space for Cities in Trade Agreements", and was presented in January 2008. In the report, the Estey Centre raised several concerns and observations regarding the role of municipalities in the TILMA and trade agreements in general. The predominant message of the report was that cities

are important to citizens, governments, and trade. The wellbeing of all lies in the success of cities. Agreements such as the TILMA, therefore, must include a 'space' for cities to acknowledge the roles, concerns and obligations of this important and most local of governments. The report points out that cities are not even given standing in the TILMA legislation in many respects. For example, individuals and firms can bring challenges to the dispute mechanism of the TILMA, but cities can not. Furthermore, an individual or firm may bring a dispute against the activities of a municipality, and the municipality would not be given standing under the dispute resolution to mount a defence. The municipality must rely on the province to do so (Ibid: iv).

Further to the concerns of local governments, local governance in general could be threatened by the TILMA's broad and comprehensive mandate, according to the findings of the Saskatchewan municipal fact-finding mission. Saskatoon City Councillor Charlie Clark expressed concerns for what he saw as a threat to local governments such as school boards. For example, in B.C. school boards had discussed limiting junk food in schools, but the minister of education argued that under the TILMA, the school systems could not regulate or limit the junk food in their schools and that they would have to ask companies such as Coca-Cola to voluntarily limit their products (Kirkland, April 24, 2008). On April 22, 2008 the Burnaby school board recommended that the B.C. School Trustees seek legal advice on the impact that the TILMA may have on such rules and regulations at the school board level (Moreau, April 30, 2008). The prospect was that local or trans-national corporations could now take school board and municipal regulations to court for limiting access to products. These democratically elected units would neither be able to act in the interests of the people they represent, nor would they be given legal standing to defend themselves in the TILMA dispute resolution mechanism.

To further localize the potential impact of the TILMA, Theresa Dust also raised the important issue of the role of grassroots and direct democracy within the TILMA vision. The ability of communities to govern their development and regulate the investment within their neighbourhoods could be completely superseded by the TILMA. Petitions and referendums, like all government decisions could be challenged under the TILMA if they are seen as producing barriers to investment. It is doubtful that the provision for legitimate exceptions for the TILMA would support this type of activism by local ratepayers (City of Saskatoon, 2007).

These local concerns were supported early on by the Canadian Centre for Policy Alternatives (CCPA). The CCPA echoed the municipal voices regarding the negative impact that the TILMA may have on the local democratically elected governing bodies, in favour of the TILMA and its dispute resolution panel. Loretta Gerlach of the CCPA stated the following of the TILMA:

*The agreement would undermine the authority of local governments—including democratically chosen bodies such as municipal governments, school boards, university boards and health regions—to make democratic decisions in the interests of their constituents. Although there is a two year transitional period before the agreement would fully extend to "municipalities and municipal organizations", as soon as the agreement comes into force, they would be subject to pressure under the agreement for any bylaws they enact that are stricter than their existing ones. (Gerlach: 2).*

These concerns increased unrest regarding the TILMA and added fuel to the growing opposition who opposed not necessarily the objectives or the purpose of the TILMA as it was, but were concerned about what the TILMA could be.

At a March 2007 Saskatchewan Urban Municipalities Association meeting a motion was passed opposing Saskatchewan's involvement in the TILMA. Further, it stated that if negotiations were to go forward, that municipalities be fully engaged in the process or be granted complete exception from the agreement (McEachern, April 30, 2008). In January 2008, the

Estey Centre report made a similar judgment that comprehensive negative list agreements such as the TILMA require unique considerations.

*Cities need not be particularly concerned that existing international trade obligations restrict their policy space.*

*This is not true for internal trade (including labour and investment) agreements, particularly for a negative list structured agreements. Therefore, cities must ensure their space is guaranteed in writing. The best means of ensuring that space exists is to exclude cities from such agreements entirely. Excluding cities from specific articles or areas of activity under an agreement is a less effective but potential means to obtain that essential space. (Kerr et. al.; 30)*

Similar to the objections of some unions, some portions of the public and the City of Saskatoon, the objection to the TILMA was not in the agreement itself, but was the complete lack of consideration. Municipalities were not included in the agreement, public consultation was not conducted beforehand, and the certainty of the scope, scale and application of the agreement was alarming given the negative list nature of the agreement.

#### **4.6 The TILMA and the Rest of Canada**

The TILMA was written in such a way that other provinces could become signatories quite easily. On September 7, 2006 at a meeting of ministers of internal trade in Halifax, the governments of British Columbia and Alberta presented the TILMA to all other provincial counterparts and invited the rest of Canada to join; however, it is important to note that British Columbia and Alberta were still bound by the existing articles of the AIT. Article 1800, section 2.c) of the Agreement on Internal Trade states that “the signatories to the arrangement are prepared to extend the arrangement within a reasonable time to all other Parties willing to accept the terms of the arrangement.” (Internal Trade Secretariat, 2008b). Therefore, the invitation to sign the TILMA was a legal obligation although it would seem in their interest to increase the scope of the agreement to include others.



In fact, at an early stage, the two provinces positioned themselves as leaders and innovators in promoting and fostering interprovincial cooperation and open internal trade within Canada and hoped that their legacy would be a model for internal trade for all of Canada. In a September 5, 2006 news release Alberta Minister of Economic Development, Gary Mar stated,

*The B.C.-Alberta agreement is a model for internal trade reform in Canada. Interprovincial trade barriers cost Canadian businesses and consumers billions each year. Replacing the 13 fragmented markets that currently exist in Canada, with a single Canadian market, would make our country more competitive internationally and enhance our ability to attract investment and skilled workers. (Government of Alberta, 2008).*

What was unclear at that time was the role that the AIT would take if all provinces signed on to the TILMA, or even if the intention was to create a new pan-Canadian agreement, out of the TILMA.

On October of 2007 the federal government stated in the throne speech that it will “consider how to use” its trade and commerce powers in the Constitution “to make our economic union work better for Canadians” (Vieira, 2007: FP1). Specifically it stated:

*Our Government will also pursue the federal government’s rightful leadership in strengthening Canada’s economic union. Despite the globalization of markets, Canada still has a long way to go to establish free trade among our provinces. It is often harder to move goods and services across provincial boundaries than across our international borders. This hurts our competitive position but, more importantly, it is just not the way a country should work. Our government will consider how to use the federal trade and commerce power to make our economic union work better for Canadians. (Government of Canada, 2008)*

Minister Jim Flaherty stated further that, "The point is this: People expect the government of Canada -- as the national government -- to make sure we have free trade in our own country, and we will only act within our own area of constitutional authority." (Vieira, 2007). This move was seen by some as controversial as it re-opens the debate over the use of ambiguous constitutional powers in order to justify dominating the policy agenda. Use of such a power would almost

certainly see provincial backlash and would exacerbate long standing federal / provincial animosities.

The federal government of Stephen Harper eventually came out fully in favour of the TILMA and encouraged all provinces to sign on, despite not being involved in the creation of the agreement (*Macleans*, 2007). One year later, on August 31, 2007, Finance Minister Jim Flaherty addressed the Canada West Foundation and stated “I encourage all provinces to sign onto the agreement (TILMA), allowing us to break down inter-provincial trade barriers and sharpen our competitive edge.” (Scotton, 2007: C-11).

Opposition to the TILMA initially was regarding its broad scope and its investment provisions that allowed governments to be taken to court over policies that “restrict” trade. This loosely written but legally binding provision was the source of some concern initially (Dobbin, 2006: A-19). Not knowing how this would be interpreted created uncertainty on the impact that it would have on governments. More specifically, it put a great deal of power that currently resided in the purview of government, into the hands of an unknown and unelected tribunal. This led some to question why any government would want to do this (Campbell, 2006: A-12).

The Council of Canadians points out that a binding and independent dispute resolution mechanism such as TILMA’s is exactly what business groups have been seeking in the AIT since its inception. Furthermore, the Canadian Chamber of Commerce and Canadian Council of Chief Executives have formally asked premiers to take this aspect of the TILMA national by adopting its dispute resolution process into the AIT (Council For Canadians, 2007). The premiers agreed to consider this at a 2007 Council of the Federation meeting in New Brunswick, in which they resolved to amend the AIT resolution process, but not include binding legislation.

Instead it further clarified roles, responsibilities and processes for conciliation within the same conciliation process (Agreement on Internal Trade Secretariat, 2007a).

Although this fell short of the goals of the Chamber of Commerce and Council of Chief Executives, it is important to recognize that had the dispute resolution mechanism been adopted, the AIT agreement would have to deal with a great deal of uncertainty over outstanding issues and ongoing disputes, and this may have had huge implications for national internal trade policy. Nevertheless the push for reform to the AIT demonstrates the influence that the TILMA had on national trade policy.

Despite divergent interpretations on the influence of the TILMA, evidence suggests that it was influential in that it challenged the current trade paradigms in Canada. In late 2007, as an economic downturn was seen in U.S. markets due to the sub-prime mortgage crisis, rising U.S. dollar and record oil prices, Canadians began to wonder if they were next. In response to this, some looked to the booming western economy and the struggling manufacturing sector in central Canada, and saw the solution. Canada needed to follow the lead of B.C. and Alberta and unite our provincial economies more than ever in order to ride out what could be an economic storm (Trichur, 2008: B-3; Rennie).

As other provinces continued their analysis of the agreement, it became less clear what the inherent benefits of the TILMA were, and more and more clear that there were concerns on behalf of local democratically elected institutions. The provinces of Saskatchewan, Manitoba and Yukon all declined to join the TILMA because of potential limits on their ability to govern through controlling investment in their economies (Unurau, 2008; Pickard, 2008: A-15).

Although all premiers have expressed a desire to eliminate trade barriers and eliminate regulatory differences, they decided that the cost outweighed whatever benefits the TILMA may

provide, especially as many analysts suggested that those benefits had been previously overstated (Campbell, 2007).

During the subsequent period, the TILMA debate largely fell out of the public discourse as the negotiations between the British Columbia and Alberta MASH sector occurred behind closed doors and the issue was considered resolved from the Saskatchewan perspective. In the months before April, 2010 a new agreement began to be mentioned in the province of Saskatchewan, but few details were released until it was signed on April 30, 2010; this was the New West Partnership Trade Agreement. The NWPTA would be the next evolution of the TILMA, and include the province of Saskatchewan. This agreement and its relation to the TILMA will be examined in greater detail in the next chapter.

#### **4.7 Conclusion**

The decision of the Saskatchewan government not to sign the TILMA was influenced by many factors. The provinces of Alberta and British Columbia were being attacked by municipal reviews citing major concerns with the agreement, led by Saskatchewan municipalities. Furthermore, the early opposition and organization of labour interests and policy think tanks in Saskatchewan thrust the TILMA debate into the public sphere, while privately the government was consulting a variety of perspectives for academic analysis, none of which provided a definitive policy choice. For these reasons, the NDP government, who wanted to keep favour with the labour critics of the TILMA, conceded to their calls for a public debate. The Saskatchewan party opposition's hands were tied because of the overwhelming amount of conflicting reports regarding the contested benefits of the agreement. In the end the Saskatchewan government cited small, but important problems with provisions of the agreement, which allowed them to make the decision not to sign. In reality, the complexity and the

contentiousness of the public debate process had made it, at that point, a no win situation for any party. This was further highlighted by the fact that this all occurred in the run up to a November 2007 election, where a change of government was on the horizon after a sixteen year NDP rule. The contentiousness of the TILMA made public consultations an attractive option for both the governing NDP government and the opposition Saskatchewan party, who would be able to remove themselves politically from the debate and focus on an election. The controversy made public through the consultation process resulted in the government's refusal to sign TILMA, but TILMA-like agreements were still very much on the horizon. Other governments immediately began renewing interest in the AIT and internal trade reform was put at the forefront.

The future of Canadian internal trade may be governed by pan-Canadian approaches, such as the AIT, and the Council of the Federation. Alternately, the future may see an increase in provincial bilateral or multilateral initiatives where provinces or regional interests act on their own to address policy problems with or without other governments, such as is currently seen in the TILMA. Furthermore, the role of the federal government must be considered, as they have recently shown that they will not be relegated to the sidelines for important national decisions, and have indicated that they will even risk conflict with the provinces to do so. The next chapter will examine further the current trends and what role the TILMA may play in influencing current and future trade agreements especially through the NWPTA that Saskatchewan signed with British Columbia and Alberta on April 30, 2010.

## **Chapter 5: The Effect of TILMA on Internal Trade Agreements in Canada**

### **5.1. The TILMA Compromise**

The TILMA was created to provide a comprehensive and substantive shift in trade and labour mobility policy between British Columbia and Alberta. The general approach used for producing this broad bilateral agreement was to sign first and negotiate after. As the previous chapters demonstrate, this ‘sign first and iron out the details later’ approach that applied to the TILMA resulted in an agreement that was signed with seeming ease and great promise. The strategic action by those two governments was to include a two year transition period to deal with concerns and to negotiate compromises. Critics were assured that the negotiations that would be undertaken during that two year period would be open and transparent and allow for clarifications and modifications before the agreement actually came into effect. The agreement, however, contained a strict timeline that placed both real and perceived limits the substance and durations of any negotiations that would be undertaken.

After a strong initial backlash against the TILMA and a perception that it would erode local authority and autonomy, the TILMA was soundly rejected by the Alberta Urban Municipality Association (AUMA) and the Union of British Columbia Municipalities (UBCM). Consequently, consultation with municipalities, academic institutions, school boards, and the health sector (MASH) stakeholders in British Columbia and Alberta continued up until April 1, 2009, the day that the agreement became binding upon local governments. In the months leading up to the April 1<sup>st</sup> deadline, the provinces came out with three protocols of amendment in as many months. These amendments represent concessions in the scope and constraints of this agreement upon municipalities. In spite of this, the provinces of B.C. and Alberta touted the TILMA as a success and continue to celebrate the landmarks of its implementation. Since the

signing, some progress has been made in harmonization of job requirements and the reduction of some other barriers addressed in the agreement. The provinces also continue to point to this agreement as a model for other provinces to adopt or emulate, despite the fact that the substantial benefits once touted by its supporters have still not been realized at this early stage.

The TILMA is clearly not the panacea to the elimination of internal trade, labour and mobility barriers, but it has increased attention to the ongoing challenges of internal barriers and offers potential solutions make greater strides towards improvement. Furthermore, this increased attention given to issues of internal trade and labour mobility has resulted in a greater focus on similar agreements and TILMA-like partnerships in western and central Canada. In western Canada it has led to the New West Partnership Trade Agreement, which was announced by Alberta, British Columbia and Saskatchewan on April 30, 2010 and that is to be fully implemented by July 2, 2013. Perhaps one of the greatest legacies of the TILMA will prove to be as a model for other enhanced regional agreements.

## **5.2 The Quebec and Ontario Economic Partnership Agreement**

As the provincial governments of Alberta and British Columbia hoped, the TILMA initiative did have an effect on encouraging other provinces to consider undertaking comparable initiatives to eliminate trade barriers. In the wake of the release of the TILMA in November 2007, Ontario and Quebec announced plans to develop a “modern and comprehensive trade agreement that would further reduce barriers to trade and enhance Ontario and Quebec’s economic relationship.” (Government of Quebec, 2010). Following this announcement the first ever joint cabinet meeting of the Provinces of Ontario and Quebec was held on June 2, 2008. At this meeting a framework for negotiating a comprehensive trade agreement was agreed upon. The framework selected broad areas to target, including policies related to labour, environmental

and consumer protection standards, health, education, culture and regional economic development. Furthermore, they agreed to make labour mobility a priority (Government of Ontario, 2010).

On September 11, 2009, at the second joint meeting of their cabinets, Ontario and Quebec signed the Ontario-Quebec Trade and Cooperation Agreement (O-QTCA). The agreement creates general policies to liberalize trade as well as specific provisions to address major trade barriers and curtail the adoption of new ones. The language is general and is similar to that of the AIT in that it provides sector-specific recommendations. It also goes further to provide broad, regionally based commitments to general trade liberalization, mobility, etc. Furthermore, the agreement also has a dispute resolution mechanism that is ‘cooperative and conciliatory’ in nature. The dispute resolution process involves several steps including: cooperation, application, consultation, request for a panel review, the establishment of a presiding body to review a claim, a panel report, an appellate panel, a mutually satisfactory resolution, the confirmation of compliance, a request for a compliance panel, and if all of these steps fail, a monetary penalty not exceeding ten million dollars may be awarded. This dispute process may not be used by private citizens against governments; it can only be used by one government against the other government (Government of Ontario, 2008).

The Quebec and Ontario Economic Partnership Agreement was created through a process that was very similar to the one used to produce TILMA, including joint cabinet meetings and without extensive public consultation. Although the bilateral agreement between Quebec and Ontario is relatively comprehensive and contains key provisions related to administrative processes, it differs from the TILMA in at least two ways: first, it is not a comprehensive negative list agreement, and second, it does not have a comparably open and efficient dispute



resolution system. Interestingly, both of these features were seen as weaknesses of the AIT. Thus, if the Quebec and Ontario agreement was created as an improved supplementation to the AIT, it may be revealed in time that they have fallen into the same trap of half measures and over-reliance upon cooperation and conciliation to the detriment of accountability, enforcement and transparency to the public. This has yet to be proven at such an early stage. What is clear is that the agreement marks a significant milestone in reducing some specific long-standing concerns over inter-provincial trade. Moreover, the size of their population and economy, as well as the volume of their trade, makes that agreement significant regionally, nationally and internationally.

### **5.3 The New West Partnership Trade Agreement**

On March 13, 2009 a joint cabinet meeting took place between the governments of British Columbia, Alberta and Saskatchewan. At this meeting the governments agreed to enter into a 'Western Economic Partnership'. No specifics about the agreement or public consultation occurred. A joint press release following the formalization of a framework agreement on September 11, 2009 described the purpose and the substance of the agreement as follows:

*In recognition of the strong economic foundation of the West and the benefit of cooperation in advancing the provinces' shared interests, the Western Economic Partnership will establish the framework for collaboration on innovative ways to bolster the economy of the West to:*

- 1. improve competitiveness and productivity of the West;*
- 2. attract business, investment and talent to the West;*
- 3. support and build capacity for innovation in the West; and,*
- 4. strengthen and diversify the economy of the West. (Government of Saskatchewan, "Saskatchewan, Alberta and B.C. Launch New West Partnership," April 30, 2010)*

The agreement encompasses four areas:

1. internal trade;
2. international marketing;
3. innovation; and,
4. procurement.

The two areas pertinent to the study of the TILMA are the provisions for internal trade as well as the provision for procurement. The framework agreement also referred to the TILMA as follows:

*Building on the agreement already in place between British Columbia and Alberta, the Western Economic Partnership will include a comprehensive western interprovincial trade agreement (Agreement) to remove barriers to trade, investment and labour mobility. The agreement will cover all public sector entities and will encompass all economic sectors. (Ibid.).*

This statement is notable for three reasons. First, it is important because of the reference, although not by name, to the TILMA in British Columbia and Alberta. Second, because it references the ‘trade, investment and labour mobility’ goals of the TILMA; and finally, because it states that from the beginning that the Western Economic Partnership was created to be a comprehensive negative list agreement similar to the TILMA, rather than a targeted agreement such as the AIT or the Ontario/Quebec Partnership Agreement.

The stated purpose of the Western Economic Partnership Agreement is six-fold:

1. to establish an open, efficient and stable market encompassing British Columbia, Alberta and Saskatchewan;
2. to enhance competitiveness, economic growth and stability;
3. to increase opportunities and choice for workers, consumers, investors and business;
4. to reduce costs for consumers, businesses and governments;

5. to promote development that is sustainable and environmentally sound, high levels of consumer protection, and health and labour standards; and,
6. to support ongoing trade and investment liberalization both nationally and internationally.

There were also some broadly stated exceptions that were made at this early stage of the agreement. Similar to the TILMA, these exceptions include environmental and consumer protection, worker and public safety as well as health and labour standards; however the agreement also includes a specific provision for accommodating Saskatchewan. It states simply but clearly that “The Parties further agree that negotiations will recognize the particular needs of Saskatchewan.” (Hall, 2009).

As soon as the TILMA was taken off the table, a new agreement was being talked about, although much less publically than had been the case with the TILMA. The New West Partnership Trade Agreement, officially launched on April 30, 2010, was the result of a framework agreement signed between the provinces of Alberta, British Columbia and Saskatchewan after a third joint Cabinet meeting. In keeping with the approach that had been used in producing and releasing TILMA, the NWPTA agreement was not released in its entirety until it was formally signed by all three provinces. Dubbed ‘TILMA redux’ by the Official Opposition, Saskatchewan Premier Brad Wall admitted that the TILMA had a large influence on this new agreement. He stated “There is much in that old agreement [TILMA] that would be manifest in a new agreement we would sign.” He went on to note that the exceptions to the agreement would include provisions for Crown Corporations and municipalities, which were a concern with the TILMA (Wood, 2010). These were part of the efforts to ‘accommodate the needs of Saskatchewan’ as promised in the framework agreement.

The NWTPA is actually a series of four agreements with an implementation period of three years. The components are as follows:

- A comprehensive economic agreement;
- An international co-operation agreement;
- An innovation agreement; and
- A procurement agreement

Most significant to this study is that it is a comprehensive economic agreement that has all the elements of the TILMA. It is described as “A comprehensive economic agreement, which will remove remaining barriers to trade, investment and labour mobility, further enhancing the competitiveness of Canada’s western provinces” (Government of Saskatchewan, 2010).

Although the economic provisions of the agreement will not come into full effect until 2013, the agreement makes two things clear. First, the new agreement is comprehensive, meaning that it is a negative list agreement similar to the TILMA. Secondly, two sets of provisions were included, one the exemption of Crown Corporations, and another for the ability of municipalities to support economic development. These provisions were included largely at Saskatchewan’s behest but also accepted by the other two provinces because they helped to appease critics who argued that this was TILMA by another name. In fact, the official website of the Alberta / British Columbia TILMA now redirects users to the website of the New West Partnership Trade Agreement. The Message states:

*Effective July 1, 2010 the TILMA (Trade, Investment and Labour Mobility Agreement) has been expanded to become the New West Partnership Trade Agreement (NWPTA) between British Columbia, Alberta and Saskatchewan.*

*Built on the success of the TILMA between Alberta and British Columbia, the NWPTA extends Alberta's and British Columbia's commitments under the former TILMA. In practice, the obligations for British Columbia and Alberta do not change under the NWPTA.*

*You will be automatically re-directed to the official site of the New West Partnership Trade Agreement...(The TILMA Trade Secretariat, July 19, 2010).*

In spite of the fact that the TILMA is never mentioned in the text of the NWPTA agreement, the exceptions for Saskatchewan are the only accommodations which differentiated the trade provisions of the NWPTA from the TILMA. In fact, the addition of other agreements within the NWPTA makes it more comprehensive than the TILMA. The NWPTA is not the TILMA by another name, as some critics have dubbed it. But more accurately, this agreement replicates the objectives of the TILMA and then adds on an international cooperation agreement, an innovation agreement and a procurement agreement. With the two notable exceptions of Crown Corporations and municipal rights to create investment incentives, the New West Partnership Trade Agreement is in fact 'TILMA-Plus', rather than 'TILMA Redux'. Despite this, it is interesting to note that to date criticism of or opposition to the new partnership has been very muted. What accounts for this is worthy of further study.

Due to the fact that the NWPTA creates exceptions for Saskatchewan only, and not B.C. and Alberta, as they are already bound by the TILMA, as well as the fact that the NWPTA will not be fully implemented until 2013, the TILMA still exists and is simply replicated in the provisions of the NWPTA. In function, the NWPTA is now set to become the expanded TILMA when fully implemented in 2013.

#### **5.4 Saskatchewan/Manitoba Cabinet Meeting**

In February of 2010 in a move comparable to one that led to B.C./Alberta TILMA and the Ontario/Quebec Partnership Agreement, Saskatchewan hosted the inaugural joint cabinet meeting with Manitoba. Issues addressed at that meeting included harmonization of transportation regulations, inter-provincial electricity transmission and aboriginal inclusion in the education system. The Premiers also announced several issues and positions, such as their opposition to harmonization of provincial and federal sales taxes, as issues to which they would present a united front to federal and international forums (Government of Saskatchewan, 2010”). In spite of this cooperation, Manitoba has not signed on to the New West Partnership Trade Agreement and has instead come out as a leader in the call for reform to the AIT and other pan-Canadian initiatives. On April 30, 2010, after the signing of the NWPTA, Manitoba’s Deputy Premier Rosann Wowchuk stated, “When it comes to trade, we [Manitoba] prefer a more national approach for Canada... rather than hiving off a certain part of the country.” (CBC News, 2010). Critics of Manitoba’s approach attribute this to the ideology of the NDP government of the province. If this is the case, one might point to Saskatchewan’s experience of joining only after a change to a more conservative government as one which might be the path of Manitoba. Both Manitoba and the signatories of the NWPTA have stated that they are open to increased cooperation, and perhaps, like Saskatchewan, certain exceptions may be made to accommodate Manitoba’s preferences and accommodate their concerns. However, unlike Saskatchewan, it seems that Manitoba’s primary criticism is that the TILMA is a bilateral, not a Canada-wide agreement.

## **5.5. Conclusion**

Saskatchewan's refusal to sign the TILMA is evidence that it was not a tipping point to unchecked liberalized trade across the country as some had feared at its outset. Moreover, although Saskatchewan eventually signed the NWPTA that supplanted the TILMA, sweeping changes to internal trade policy continue to be met with scepticism and opposition by some members of the public and interest groups. The TILMA was produced through an incremental approach and implementation and change has not been sudden. What is undeniable is that trade and labour mobility policy development is happening at a more rapid rate in recent years and that it is the provinces, and not the federal government, who are driving this change. Furthermore, provinces are working bilaterally, tri-laterally and regionally to address both specific and general trade and labour mobility goals. The Council of the Federation and the AIT are still recognized as major forces in confederated policy development. Nevertheless, the provinces have made it clear that they are willing to work amongst themselves to supplement national policies where they see deficiencies in relation to internal trade, investment and labour mobility policy. The signing of TILMA, the NWTPA, and the bilateral agreement between Quebec and Ontario are cases in point.

## **Chapter 6: Conclusion**

The purpose of this concluding chapter is to provide a summary of findings related to the three research questions: What is the TILMA? Why did British Columbia and Alberta sign the TILMA but Saskatchewan did not? Was the TILMA an influential or transformative policy?

### **6.1 What is the TILMA?**

To reiterate, the TILMA is a bilateral agreement signed by the British Columbia and Alberta governments to reduce barriers to trade, investment and labour mobility between them. The TILMA was designed to supplement the AIT framework on minimizing barriers to internal trade across Canada. The AIT contains provisions that permit provinces to enter into bilateral or multi-lateral agreements, such as the TILMA, as a means of supplementing, rather than supplanting it. The TILMA is a comprehensive negative list agreement that prohibits a wide range of restrictive or protectionist practices related to trade, investment and labour mobility.

### **6.2 Why did British Columbia and Alberta Sign the TILMA but Saskatchewan Did Not?**

The provincial governments of British Columbia and Alberta signed TILMA because they saw it as appropriate policy in light of the actual and potential extensive trade and labour mobility linkages between the two neighbouring provinces. They believed that eliminating or at least reducing the number and scope of trade and labour mobility barriers would have a positive effect on their respective economies. Two other key factors were also significant. First, both governments in those provinces were ideologically predisposed to trade and mobility liberalization. Second, both governments had strong majorities in their respective legislatures.

Two successive Saskatchewan governments were also cognizant of potential benefits of signing the TILMA, but they chose not to do so. Ultimately, two interrelated factors account for the difference between the decision of the Saskatchewan governments and the decisions of the



British Columbia and Alberta governments. The first, and primary factor, articulated publicly by both the NDP and the Saskatchewan Party governments, was that unlike the New West Partnership Trade Agreement, TILMA did not permit exemptions favoured by the provincial government related to subsidiaries of crown corporations and the right of municipalities to create investment incentives and establish procurement preferences. These uncertainties were the explicit reason for the decision not to sign it by the Saskatchewan Party Government.

The second factor that led to the refusal of two successive Saskatchewan governments to sign the TILMA was related to the timing of the public consultation processes, and the political dynamics that emerged during the consultations. The public consultation process for British Columbia and Alberta was undertaken after, rather than before, both governments signed the agreement and very little information or opportunity was available to stakeholders and the public to engage in the formulation stage of the process. Those governments wanted to minimize stakeholder and citizen engagement prior to reaching and signing an agreement between the two of them. For this reason, the consultation process with the MASH sector was to take place during the two year implementation period. This is certainly the major reason that there was little public opposition to the TILMA in those two provinces before it was signed.

Undoubtedly, it was a conscious effort by the Liberal and Conservative governments of British Columbia and Alberta respectively to control the debate and avoid public opposition to the agreement. British Columbia and Alberta faced opposition during the two year implementation period of the agreement but, as it was already signed, the debates were framed by the governments as negotiations for how the agreement would be implemented, rather than whether it should be signed. Nevertheless, public debates resulted in three protocols of amendment, which softened some of the provisions regarding restrictions placed upon

municipalities, local governing authorities, crown corporation procurement and other matters. However, this was not achieved until 2009 by which time both the NDP and Saskatchewan Party had consolidated their position against TILMA.

The decision of Premier Lorne Calvert's provincial government to undertake public consultations before deciding whether to sign TILMA was based on its concern regarding the potential adverse political effects of signing TILMA without first undertaking consultations. By the time that the NDP government had decided whether to undertake the consultations the proponents and opponents of the agreement had started to express their views and to mobilize their campaigns. The NDP government was particularly concerned about the opposition to the TILMA by major organizations in the province, especially those that were strong traditional supporters of the NDP government. Consequently, the government facilitated a broad public consultation process to debate the merits of signing the agreement. This process revealed an extreme divergence of opinion. Whereas many unions and interest groups were strongly opposed to signing the TILMA, business groups and conservative think tanks were strongly in favour of signing it. The debate between the proponents and opponents of the TILMA was driven by a combination of ideological differences and material interests.

The growing opposition to the TILMA made it a crucial issue in the context of the electoral cycle at that particular point in time. It was a cleavage issue for which the potential for losing voter support was greater than increasing it. This was an important issue for both parties because the NDP government had won the 2003 election with a very slim majority of only two seats. Similarly, with the 2007 election in sight the Saskatchewan Party did not want to risk losing another election on issues related to the degree to which it was committed to preserving and protecting provincial crown corporations. That consideration persisted even after it won the

2007 election by a margin of twenty seats. Thus, the political situation of the NDP government stood in stark contrast to that of the Progressive Conservative government in Alberta in 2006, which had held dominant majorities for 35 years and the Liberal Government in British Columbia who had just been elected to a second majority government in 2005. Both governments had a great deal of political capital in which to justify a decisive decision to join the TILMA without a great deal of prior consultation, even if there would be some objection. Despite the fact that it had won the 2007 election by a comfortable margin, the Saskatchewan Party government could not change the position it had articulated on TILMA prior to and during that election. Thus, any interest it had in achieving a new trade, investment and labour mobility regime would have to take at least a slightly different form. This happened in 2010 when the Premier Brad Wall's Saskatchewan Party government signed the NWPTA that included nearly all the aspects of the TILMA plus some additional key provisions, including those that allowed municipalities to use some investment incentives and to allow subsidiaries of crown corporations to operate under the same policy framework as the parent crown corporations.

### **6.3 Was the TILMA a Transformative Policy?**

After a review of historical trends, recurring debates and interprovincial relations related to internal trade in Canada, and what has happened to date, one is inclined to conclude that the TILMA was not a transformative policy; instead it was merely a long overdue response to a perennial problem of relatively minor consequence. The TILMA was also not unique. It was neither the first inter-provincial agreement between provinces nor the first agreement to supplement the AIT; it was simply the most substantial to that point in time. Even if it was not transformative or unique, the TILMA was notable and even important in several ways.

First, the TILMA was notable because its scope was relative broad. The fact that it was a relatively comprehensive, negative list agreement made it a notable departure from the narrower and piecemeal agreements of the past. Second, it was notable because it was negotiated on a bilateral basis without the involvement of the federal government or other provincial governments. The TILMA was not the first bilateral agreement that did not involve the federal government and all provinces, but arguably it was the most significant. They decided to take a bilateral approach and not involve the federal government and any provincial governments, other than Saskatchewan, because they wanted to avoid the challenges of trying to negotiate a pan-Canadian agreement involving fourteen governments. They wanted to supplement the AIT, rather than renegotiating it.

The TILMA was influential in several respects. First, it focused attention on the issues of internal trade, investment and mobility barriers not only among the government officials in B.C and Alberta, but also government officials in other provinces and in Ottawa. It fostered some renewed interest on the part of the federal government to reform the AIT, as well as an interest in the expansion of existing interprovincial trade agreements and the development of new ones.

Second, the TILMA created the precedent of a negative list trade agreement within Canada, the prospect of an independent enforcement mechanism within Canada, and a model for stronger interprovincial and regional trade blocs such as the Ontario/Quebec Partnership Agreement and the New West Partnership Trade Agreement.

Third, the TILMA served as a reminder of the importance of creating a policy framework for internal trade at the national and at the regional level. The TILMA demonstrated that, like many other inter-governmental policy areas, internal trade has to be dealt with through a combination of national pan-Canadian and interprovincial agreements. The dual approach makes it possible to establish a national framework and regional frameworks that serve the national and regional interests respectively. In country such as Canada in which regional blocks still matter, this dual track is essential for harmony and unity. The diversity of geography, resources, economy and culture of each province and region requires a specificity that national policy cannot provide. By supplementing national policies, such as the AIT with policies, such as the TILMA, regional interests are served, while basic harmonization is facilitated and ensured through national frameworks. The jury is still out on the extent to which either TILMA or the New West Partnership, which supplanted it, constitutes positive supplementation of the AIT, but the result has been incremental change, albeit at a faster pace than in recent history, rather than an immediate transformative change which dominated public debate both for and against the TILMA.

Fourth, the TILMA provided the basis for the New West Partnership and a model for the Ontario /Quebec Trade and Cooperation Agreement. Not surprisingly, therefore, both of those agreements have two things in common with the TILMA. First, they are regional agreements that liberalize trade and facilitate mobility between neighbouring provinces. Secondly, they each

contain provisions that recognize and respect the existence of the pan-Canadian AIT. In this respect, even after it was replicated, the New West Partnership, the TILMA was not a threat to the existing national internal trade (i.e., AIT) as many of its critics feared it would be. Instead, it along with the interprovincial agreements that follow it, may foster new relevance and support either for revising that national policy or in creating something comparable to it that ensures that regional trade agreements do not become the new internal barriers within the Canadian federation.

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